AMERICAN BAR ASSOCIATION

JOVRNAL

VOL. XX AUGUST, 1934 NO. 8

The Bar Reports on Some Phases of Criminal Law
BY WILL SHAFROTH

Program on Criminal Law and its Enforcement
BY ALBERT J. HARNO

Our Methods of Giving Effect to International Law and Treaties
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Review of Recent Supreme Court Decisions
BY EDGAR BRONSON TOLMAN

Federal Criminal Statutes, 1934
JOSEPH P. CHAMBERLAIN

Program of Fifty-Seventh Annual Meeting

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Winner of Award Under Ross Bequest

THE Annual Meeting program for Thursday evening, August 30, contains the first public announcement of the winner of the prize essay contest conducted under the terms of the bequest made by the late Judge Erskine M. Ross of California. The successful contestant was Mr. Carl McFarland, of Helena, Montana, and he will read his essay, entitled "Administrative Agencies in Government and the Effect Thereon of Constitutional Limitations" at that session.

Mr. McFarland's production was chosen from a total of forty-eight submitted by contestants for the prize of $1,000 offered by the Executive Committee of the American Bar Association for the best essay on the above subject. The special committee to examine the papers submitted was composed of Roscoe Pound, chairman; Hon. Henry Upson Sims, of Birmingham, Ala., former President of the Association, and Hon. George T. McDermott, Judge of the U. S. Court of Appeals for the Tenth Circuit. The Committee reported to the Executive Committee at its meeting in Washington last May that it was unanimously of the opinion that the prize should be awarded to Essay No. 65 and so recommended. The recommendation was of course approved, and the winning number proved to be that assigned to Mr. McFarland.

The winner is at present Special Assistant to the Attorney General of the United States, and was formerly Code Commissioner of Montana. He holds the degrees of S. B., A. M., LL. B. and S. J. D. from Harvard University and the State University of Montana. He is the author of "Judicial Control of the Federal Trade Commission and the Interstate Commerce Commission" (Harvard University Press, 1933).

The Ross Bequest, it will be remembered, was made several years ago. Judge Ross bequeathed $100,000 to the American Bar Association, "to be by it safely invested, the annual income of which is to be offered and paid as a prize for the best discussion of a subject to be by it suggested for discussion, at its preceding annual meeting." In the October, 1933, issue of the JOURNAL the Executive Committee stated that approximately $35,000 of the bequest had already been received from the Ross estate, and that it had determined to put the bequest in operation. It therefore announced a prize of $1,000 for the best essay on the subject on which Mr. McFarland has written. The papers were to be submitted on or before March 1, 1934.

The contest aroused considerable interest, as shown by the number of those competing for the award.

Colorado Bench and Bar Considering Plan to Integrate Bar Through Supreme Court Power

THE Bench and Bar of Colorado are giving consideration to a plan for the integration of the bar through the inherent power of the Supreme Court of Colorado to supervise administration of justice. Two or three hundred lawyers and many of the judges of the county, district, and Supreme Courts of the State met at the University of Colorado on May 19th in response to a general invitation by the School of Law to all the lawyers of the state. The invitation was to participate in a Law Day devoted to a detailed discussion of the power of the Supreme Court to regulate procedure, discipline and other problems.

The Supreme Court has held it has inherent authority to regulate procedure, although the legislature as early as 1913 passed an act giving the rule-making power to the court in civil and criminal procedure. The Court also about ten years ago promulgated a code of rules covering discipline proceedings in which the Grievance Committee of the State Bar Association was designated as an agency of the Court for investigation and preliminary proceedings in disbarment and other matters.

The University Conference resulted in a prolonged and earnest discussion participated in by many lawyers and judges in which the organization of an all-inclusive Bar Association by court order was suggested and seriously considered. The Supreme Court revealed that it had under consideration rules levying an annual license fee of $5 a year on all practicing lawyers, the proceeds of which were to be devoted in part to discipline matters and in part to

general professional interests. It also had considered calling upon the State Bar Association to report a series of rules for comprehensive bar organization under court supervision. Considerable support for the plan developed in the discussion. There was some dissent. It is understood the Court is not taking any action at present. No vote was taken at the Law Day Meeting. The lawyers present felt a vote was unwise in view of the informal character of the meeting and the pendency of Supreme Court deliberation on the matter.

President Evans of the American Bar Association was the guest of the day and spoke both to the students at luncheon and to the lawyers at a dinner under the auspices of the Boulder County Bar Association and other County Bar Associations of the Eighth Colorado Judicial District.

Association Publishes Handbook on Unauthorized Practice

"UNAUTHORIZED Practice of Law", a handbook for lawyers and laymen, by Professor Frederick C. Hicks of the Yale Law School and Mr. Elliott R. Katz, Research Assistant at the same institution, is being published by the Lord Baltimore Press for the American Bar Association, and will be available about the 15th of August. The work was undertaken by Professor Hicks at the request of the Association's Committee on Unauthorized Practice, and constitutes the most authoritative study on this subject which has yet been made. It does not discuss the matter in an abstract or theoretical manner, but gives up-to-date and definite information regarding statutes and decisions on this subject in all American jurisdictions, the progress which has been made in securing declaration of acceptable principles from fiduciaries in reference to activities in the field of legal practice, and finally, a complete bibliography of all existing literature on unauthorized practice.

Professor Hicks and Mr. Katz have done a thorough piece of work, and the thanks of the bar are due to them for providing this tool which will be of great help to committees engaged in studying the subject, and in preventing the practice of law by lay agencies. Mr. John G. Jackson, Chairman of the Unauthorized Practice Committee of the American Bar Association, in a short introduction, stresses the point that the interest of the public is the paramount consideration and that the only justification for stamping out unauthorized practice is that it is directly harmful to the public.

Part one of the book contains the pertinent state statutes, given in full detail. Part two is a digest of cases, summarizing in a short paragraph or two the opinion in every decided case on this subject. Part three sets out in haec verba the declarations of principles which have been entered into by fiduciaries, generally as a result of negotiations with bar associations or bar association committees, strictly limiting and defining what will be regarded as ethical for their members to do in the field of preparing wills, trust agreements, escrow agreements, conveyances, and so forth. Part four is a bibliography of the general subject.

These books will be available at $1.00 each, post paid, and individuals who are interested should send in their orders immediately to the American Bar Association so that enough copies may be ordered to fill the demand.

Pacific Coast Institute of Law and the Administration of Justice Formed

THE first meeting of the newly created Pacific Coast Institute of Law and the Administration of Justice will be held at the University of Oregon School of Law on Sept. 6, 7 and 8, according to an announcement by Dean Wayne L. Morse, one of the movers of the new enterprise. The Oregon State Bar Association, in pursuance of a vote at the last annual meeting, will hold its annual meeting at Eugene, Oregon, in conjunction with the Institute's program. The new organization is thus assured of the attendance of between four and five hundred Oregon attorneys and judges, at its first meeting.

The program for this meeting has not yet been made up but it will be built up around the four topics of administrative law, legislative and constitutional questions involved, administration of criminal law, and legal education.

"During recent years," says Dean Morse, in explaining the new undertaking, "great advances have been made in social science research, but the findings of these researches are not generally known by the administrators of the law. It is obvious that the average lawyer and judge do not have the time to read and study social science research treatises. Yet if the results of such research are to benefit society through its legal institutions, they must be made known to and explained to the members of the personnel entrusted with the administration of justice.

"Hence this project to bring together each summer on the Pacific Coast outstanding members of the bench and bar and nationally recognized social scientists and legal scholars for a conference institute. The first institute would last three or four days and the members would be invited to discuss in round table groups questions of mutual interest. Such an institute would promote a mutual exchange of points of view and would undoubtedly interest many of the members of the bench and bar in the contentions and contributions of those social science disciplines which are closely related to the law.

"For instance, it has been suggested that one round table be devoted to a discussion of taxation. Such a round table would be so organized as to bring out differences between the legal doctrines of taxation law and the economist's view as to the economic laws of taxation. Likewise, a round table on criminology would bring together the clashing points of view of modern criminology and the prevailing doctrines of the criminal law. A profitable round table on guilt detection could be held at which the research findings of guilt detection laboratories could be discussed in light of the existing law of evidence. Other topics for round table discussion which have been suggested are: labor problems and labor law; modern business associations and regulatory laws relating thereto; municipal corporation law and municipal corporation practices; the changing meanings of due process of law; conflicts of psychology and sociology with the law; political science as practiced; historical contributions to legal reform; federal emergency "New Deal" legislation and constitutional law doctrines. Another very important round table proposed is one which would consider the question as to what training should be required of the prospective lawyer.

"The proposal for a Pacific Coast Institute of Law and the Administration of Justice," he continues, "was first presented to the Pacific Coast Regional Committee of the Social Science Research Council at its meeting on March 10, 1933. The Pacific Regional Committee instructed Dean Wayne L. Morse of the University of Oregon School of Law to appoint a committee, consisting of representatives from the leading law schools on the Pacific Coast, to consider the proposal and to prepare recommendations to be submitted to the committee at its next meeting on June 14, 1933. The following committee was appointed: Dean Harold Shepherd, University of Washington School of Law; Dean Marion Kirkwood, Stanford University School of Law; Dean William G. Hale, University of Southern California School of Law; Dean Orrin K. McMurray, University of California School of Jurisprudence; Professor Max Radin, University of California School of

Jurisprudence; Dr. Herman Adler, psychiatrist at the University of California; Professor Alexander Kidd, University of California School of Jurisprudence; Mr. Ronald Beattie, Bureau of Public Administration, University of California. The committee met in San Francisco at the time of the Social Science Conference and discussed at length the Law Institute proposal. The members of the committee were unanimous in their enthusiastic support of the proposal and instructed the chairman of the committee to notify the Pacific Regional Committee that it was the recommendation of the institute committee that the proposal should be supported by the Pacific Coast Regional Committee.

"The Carnegie Corporation is sponsoring the Institute by means of a grant of funds which will be used to defray the traveling expenses of distinguished guest speakers."

Massachusetts and Texas Courts Promulgate New Rules for Bar Admission

THE new rules for admission to the Bar promulgated by the Supreme Judicial Court of Massachusetts place that State definitely in the list of those adopting the requirement of two years of prelegal college education or its equivalent. The rule, however, does not apply to applicants who begin the study of law prior to Sept. 1, 1938.

Previous to that date the requirement as to general education is that every such applicant shall have graduated from a public day high school in the Commonwealth having a four years' course, or otherwise have received an education equivalent thereto in the opinion of the Board of Bar Examiners, and such education shall have been completed before the applicant began the study of Law."

Massachusetts is the fourth state this year to take the two-year college step, the Supreme Court of New Mexico having adopted the American Bar Standards in January by rule of Court, the Alabama State Bar Association having adopted the two-year college requirement by rule of the Board of Governors of the State Bar in March, and the Virginia Legislature having also passed it the same month. Thus three methods have been used to obtain this result in four states. Massachusetts is the twenty third state to adopt the requirement and with its accession to their ranks the number of lawyers in the states presently or prospectively having the two year college requirement for admission to the bar, plus those in the states where the American Bar Association Standards have been approved by the State Bar Association, is eighty eight percent of the entire legal population of this country.

New rules for admission to the bar in the State of Texas, recently promulgated by the Supreme Court and effective July 15, 1934, extend the period of law study from two to three years and provide for a six months' period of clerkship which may, however, be served three months at a time during the period of law study. The fee for foreign attorneys has been raised to $40, and these applicants are required to reside in Texas and study the various statutes referred to and specified as subjects of study for a period of six months immediately preceding their admission. The diploma privilege has been retained for graduates of eight Texas law schools and of such other law schools approved by the American Bar Association as are entitled to the diploma privilege in the states where they are located.

Distinguished Speakers Take Part in Dedication of University of Michigan Law Quadrangle

THE University of Michigan's magnificent Law Quadrangle, costing eleven million dollars and the gift of the late William W. Cook of New York City, was dedicated on the afternoon of June 14, according to a report in the Chicago Tribune.

"The formal dedication," says the report, "took place in Hill auditorium, with President Alexander Ruthven presiding and alumni of the law school, including several hundred lawyers and judges from other states, filling the amphitheater. Dean Bates, Dean Pound and Mr. Justice Stone spoke at this ceremony, after which the latter was invested with the degree of doctor of laws. In the evening the alumni and students of the law school overflowed the cathedral-like dining hall of the Lawyers' club, on the quadrangle, and filled the adjacent Renaissance period lounge, for the addresses of Chief Justice Rosenberry, Mr. Baker and James O. Murfin, regent of the university."

In his address, we are told, Justice Stone reviewed the past influence of the Bar in public life and then took the lawyers of the present to task for their failure to provide the guidance expected of them "in solving the problems of a sorely stricken social order." Justice Rosenberry spoke critically of certain current political manifestations as tending to undermine our fundamental constitutional doctrine of the separation of powers and to substitute the decisions of numerous administrative tribunals for the safeguards of the regular processes of the courts. Dean Pound of the Harvard Law School also referred to the growing tendency to appoint commissions and to the idealistic delusion that "justice would be better administered if there were no authoritative body of legal precepts and no adherence to the course of decisions in the past, but each case were determined by the common sense and sense of justice of a strong and upright judge, unhampered by rules or technical principles or technical conceptions."

Dean Bates, for twenty three years at the head of the faculty of the University of Michigan Law School, spoke of the confusion of the times and the need for carrying legal research into the social and economic fields which are more and more influencing the law.

Washington Letter

Amendment to Rules of Supreme Court of United States

1266 National Press Bldg.,
Washington, D. C., July 11.

THE Supreme Court of the United States has promulgated the following amendment to its rules, effective September 1, 1934:

"It is ordered that Rule 38 of the Rules of this Court be, and it is hereby, amended as follows, effective September 1, 1934, viz:

"(1) That the heading of the said Rule be amended to read as follows:

"'Review on writ of certiorari of decisions of State Courts, Circuit Courts of Appeals, and the Court of Appeals of the District of Columbia.

"'(See Sections 237 (b) and 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA Par. 344 (b) and 347 (a); also Act of March 8, 1934 (28 USCA Par. 723a), and Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilty, in Criminal Cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia, promulgated May 7, 1934.)'"

"(2) That paragraph 2 of the said Rule be amended to read as follows:

"'2. The petition shall contain only a summary and short statement of the matter involved and the reasons relied on for the allowance of the writ. A supporting brief may be included in the petition, but, whether so included or presented separately, it must be direct, concise, and in conformity with Rules

26 and 27. A failure to comply with these requirements will be a sufficient reason for denying the petition. See United States v. Rimer, 220 U. S. 547 (31 S. Ct., 596, 55 L. Ed. 578); Furness, Withy & Co. v. Yang-Tsze Insurance Ass'n., 242 U. S. 430 (37 S. Ct., 141, 61 L. Ed. 409); Houston Oil Co. v. Goodrich, 245 U. S. 440 (38 S. Ct. 140, 62 L. Ed. 385); Layne & Bowler Corporation v. Western Well Works, 261 U. S. 387, 392 (43 S. Ct. 422, 67 L. Ed. 712); Magnum Import Co. v. Coty, 262 U. S. 159, 162 (43 S. Ct. 531, 67 L. Ed. 922); Southern Power Co. v. North Carolina Public Service Co., 263 U. S. 508 (44 S. Ct. 164, 68 L. Ed. 413). Forty printed copies of the petition and supporting brief shall be filed. The petition will be deemed in time when it, the record, and the supporting brief, are filed with the Clerk within the period prescribed by section 8 of the Act of February 13, 1925, except that in cases of petition to this Court for writ of certiorari to review a judgment of a Circuit Court of Appeals or of the Court of Appeals of the District of Columbia in criminal cases within the provisions of the Act of March 8, 1934, the petition shall be made within the period prescribed pursuant to said Act in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934.'"

Legislation of the Seventy-Third Congress

The Second Session of the Seventy-third Congress, which convened January 3, 1934, adjourned on June 18. During the first and second sessions of the 73rd Congress, there were enacted 540 public laws and joint resolutions and 436 private laws and joint resolutions, or a total of 976 laws and joint resolutions.

Thirty-nine House bills, one House joint resolution, 31 Senate bills and one Senate joint resolution were vetoed, of which one act (Independent Offices Appropriation Bill, 1935) was subsequently passed over the veto.

The President transmitted to the House 88 messages; executive departments transmitted 504 communications and there were 5,201 petitions filed.

Speaking before the Federal Bar Association, June 25, with respect to the legislative program which was sponsored by the Department of Justice, Attorney General Cummings stated:

"Seventeen statutes of major importance, which were drafted by the Department of Justice, and introduced at our request, were passed by the Congress. These statutes are designed to make more effective the efforts of the Federal Government in the suppression of organized crime, and to render the administration of justice in the Federal courts less complicated, less expensive and far more speedy.

"Encouraged by the enactment of these measures, the Department is developing additional means for the furtherance of its campaign against crime and for the simplification of procedure, the results of which will be made known from time to time."

In an address before the National Press Club on July 6, on the subject "Law and the New Deal," the Attorney General called attention to the two major items submitted by the Department of Justice for Congressional approval; namely, a set of crime bills and an act to enable the Supreme Court to make uniform rules in civil cases.

With respect to the latter, he said:

"'The Federal Procedure Bill,' as it is called, may not be so well understood by the public at large. In its sphere, however, it is fully as important as the crime bills, and in some ways, far more fundamental. For years, the federal courts have been anchored to an outworn system. This Act should bring about a much needed reform. I do not think it is too much to hope that when the Supreme Court finally puts the new rules into effect the result will be recognized as one of outstanding importance in rendering the administration of justice less complicated, less expensive, and far more speedy."

In announcing a crime conference, the Attorney General stated:

"It is to be hoped that the new Department of Justice building will be ready for occupancy this Fall. In that building is provided a conference hall which will seat several hundred people. It has seemed to me fitting that the first important use of this room should be devoted to a crime conference of nation-wide significance. It is my purpose in due course to issue a formal call for such conference to be held during November or the early part of December. During the summer, the complete agenda will be worked out. The conference will consider practically every aspect of crime and approach the problem of law enforcement in a way never before attempted. To it will be invited representatives from each of the states of the Union. I am confident that such a conference, under the direction of the Attorney General, will serve a useful public service. The plea has the endorsement of President Roosevelt.

Supreme Court Rules in Law Cases

On June 19, 1934, the President approved Public No. 415, to give the Supreme Court of the United States authority to make and publish rules in actions at law.

The Attorney General made the following statement with respect to this legislation:

"The procedural bill which has just been signed by the President is the fulfilment of the labors of those public-spirited leaders of the bench and bar who have, for the past quarter of a century, striven for the simplification of Federal legal procedure through rules of court.

"By this law the legislative branch of the Government returns to the judicial branch its traditional function of prescribing the rules of practice and procedure which shall be followed in the administration of justice. Prior to the American Revolution, both the common law courts and the courts of chancery in England had regularly exercised the power to regulate procedure. Throughout the history of this country, however, while the rules of procedure for the Federal trial courts in equity cases have been prescribed by the Supreme Court, the procedural rules in actions at law have been governed by legislation.

"While the responsibility for the administration of justice in actions at law has been placed upon the courts of the Federal Government, they have not had the power to regulate the manner in which justice should be administered. On the contrary, they have been bound by rigid rules of procedure established by legislative enactment which, in many instances, have rendered the courts powerless to prevent miscarriages of justice. In the future, however, the courts will be able to regulate procedure in such manner as to promote the efficient administration of justice.

"This will have a tendency to make procedure subsidiary to the substantive law, as it should be, and will emphasize in the minds of bench and bar substantive rights rather than matters of form.

"It is to be hoped that the system of procedural rules prescribed by the Supreme Court for the Federal trial courts will serve as a model for the several States and that, eventually, we shall have a uniform system of procedure throughout the country, in the Federal and State courts alike."

Declaratory Judgments

On June 14, 1934, the President approved Public Law No. 343, to amend the Judicial Code by adding a new section to be numbered 274 D, providing for declaratory judgments.

Method of Selling Real Estate Under Order or Decree of Any United States Court

On June 19, 1934, the President approved Public No. 426, which provides:

"That section 1 of the Act of Congress approved the 3d day of March,

1893, chapter 225, be amended so as to read as follows:

"'All real estate or any interest in land sold under any order or decree of any United States court shall be sold at public sale at the courthouse of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct: Provided, however, that the court may, upon petition therefor and a hearing thereon after such notice to parties in interest as said court shall direct, if it finds that the best interests of said estate will be conserved thereby, order and decree the sale of such real estate or interest in land at private sale; Provided further, That the court shall appoint three disinterested persons to appraise said property, and said sale shall not be confirmed for less than two-thirds of the appraised value!"

Federal Communications Commission

On June 19, 1934, the President approved Public No. 416, to provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes. The Act creates the "Federal Communications Commission," composed of seven commissioners, which supersedes the Federal Radio Commission and exercises certain powers and functions heretofore vested in the Interstate Commerce Commission and the Postmaster General with respect to telegraph companies and telegraph lines.

Bankruptcy Legislation

On June 28, 1934, the President approved Public No. 486, known as the "Frazier-Lemke bill," amending Section 75 of the Bankruptcy Act, entitled "Agricultural Compositions and Extensions," by adding a new subsection.

Under this new subsection, any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition or answer asking to be adjudged a bankrupt. Such farmer may, at the time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in the Act.

Provision is made for appointment of appraisers to appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. Possession of the property is to remain in the debtor and upon his request, with the consent of the lien holder or lien holders, the trustee, after the order is made setting aside to the debtor his exemptions, shall agree to sell to the debtor any part, parcel, or all of the remainder of the bankrupt estate at the appraised value, under certain terms and conditions, to-wit:

"a. Payment of 1 per centum interest upon the appraised price within one year from the date of said agreement.

"b. Payment of 2½ per centum of the appraised price within two years from the date of said agreement.

"c. Payment of an additional 2¼ per centum of the appraised price within three years from the date of said agreement.

"d. Payment of an additional 5 per centum of the appraised price within four years from the date of said agreement.

"e. Payment of an additional 5 per centum of the appraised price within five years from the date of said agreement.

"f. Payment of the remaining unpaid balance of the appraised price within six years from the date of said agreement.

"Interest shall be paid on the appraised price and unpaid balances of the appraised price yearly as it accrues at the rate of 1 per centum per annum and all taxes shall be paid by the debtor."

If he complies with the provisions of this act the debtor may apply for his discharge.

If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as provided in the Act, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of the Act. At the end of five years, or prior thereto, the debtor may pay into the court the appraised price of the property of which he retains possession. However, upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge.

The provisions of this Act apply only to debts existing at the time the Act becomes effective.

Application of the Securities Act of 1933 to Oil and Gas Royalty Interests

Title II of the Securities Exchange Act of 1934, effective July 1, 1934, amends Section 2 (1) of the Securities Act of 1933 to read in part as follows:

"The term 'security' means any . . . fractional undivided interest in oil, gas, or other mineral rights. . . ."

It also amends Section 2 (4) of the Securities Act to read in part as follows:

". . . with respect to fractional undivided interest in oil, gas, or other mineral rights, the term 'issuer' means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering."

On June 30, 1934, the Federal Trade Commission made public an interpretation (Release No. 185) of the Act as it relates to fractional, undivided oil and gas royalty interests. At the same time, it announced adoption of a form to be known as Form G-1 to be used for the registration of such interests.

The Commission also made public regulations adopted under Section 3(b) of the Securities Act exempting certain fractional, undivided interests in oil, gas or other mineral rights under specified conditions.

Appointment Announced

On June 26 the Attorney General announced the appointment of Honorable Justin Miller, who is Chairman of the Criminal Section of the American Bar Association, as a Special Assistant to the Attorney General to assist the Solicitor General in the preparation and argument of cases in the Supreme Court of the United States.

Binder for Journal

The JOURNAL is prepared to furnish a neat and serviceable binder for current numbers to members for $1.50. The price is merely manufacturer's cost plus expense of packing, mailing, insurance, etc. The binder has back of art buckram, with the name "American Bar Association Journal" stamped on it in gilt letters. Please send check with order to JOURNAL office, 1140 N. Dearborn St., Chicago, Ill.

THE BAR REPORTS ON SOME PHASES OF CRIMINAL LAW

Brief Summary of Replies Received from Two Hundred and Twenty-five Questionnaires Dealing with Criminal Law and Its Enforcement — Generally Speaking, It is Not Considered a Serious Problem in Small Communities—Recognized as a Matter of Great Importance and Grave Moment in the Larger Cities, etc.

By Will Shafroth
Assistant to President, in Charge of National Bar Program

TWO hundred and twenty-five questionnaires dealing with Criminal Law and Its Enforcement have been returned by Bar Association committees from the various states. Twenty of these returns were from state bar associations, 60 were from metropolitan centers with a population of 100,000 or over, and 145 were from rural communities with populations under 100,000. From these answers it appears that generally speaking, enforcement of the criminal law is not considered by the bar as a serious problem in small communities. In the larger cities its importance is admitted, and it is recognized as a matter of grave moment. The lawyers feel as a rule that it is being handled fairly well considering the machinery which is presently available, but in very few places is it asserted that improvements are not in order.

More than two-thirds of the rural communities canvassed, including cities under 100,000, state that criminal offenders do not have sufficient influence to prevent their apprehension or punishment in any type of law violations. Where such influence does exist, it is generally confined to lesser offenses, the most commonly named of which are traffic violations. Bootlegging, and the operation of slot-machines, gambling places, and houses of prostitution are also mentioned, and the police are generally held responsible for the laxity in these regards.

In the larger cities, the scale turns the other way, and more than two-thirds of them indicate some connection between politics and crime. Again, this is exerted chiefly through the police, and again it is largely confined to minor offenses.

Election frauds traceable to the criminal element are practically non-existent in the smaller localities, and are to be found now in only a few of the largest cities. In some of the metropolitan centers where strong bar associations exist, there have been some studies of the criminal law enforcement situation, and crime commissions, grand jury investigations and other means have been taken to improve conditions.

There is little dissatisfaction with the prosecutor's office, the tendency to charge him with inefficiency, however, being much greater in the larger cities than in rural communities. Where there is dissatisfaction in the country districts it is largely attributed to lack of an adequate investigating staff, or insufficient personnel to carry on properly. The youth and inefficiency of assistants, inadequate salaries which fail to attract the best type of men, political influence, inadequate police, public indifference, and a general lack of a proper sense of duty are among other complaints which are made. In the larger cities, the staff is generally regarded as adequate in numbers. Thirty questionnaires out of 225 report lack of cooperation between the prosecutor and other enforcing agencies, such trouble ordinarily arising out of political friction between the prosecutor and other officials. The policy of bargaining with the offender for a plea of guilty of a lesser offense is abused in scarcely more than one community out of ten. In perhaps one-fourth of the answers received dissatisfaction is indicated with the present situation with reference to forfeited bail bonds, which in some cases is due to the insolvency of the company or individual maker. While it is asserted by about half of the committees which answered the question that assistant district attorneys or other subordinate officers in the prosecutor's office are political appointees, a slight majority of these answers say that this has not resulted in inefficiency. Five out of six of the questionnaires from large cities suggest that politics play the primary role, but again only half of them regard this as the cause of any inefficiency.

The enforcement of criminal law by the police comes in for greater criticism than any other single factor mentioned in the questionnaire. The general estimate of the police is that they are below the grade of "Good," but considerably better than "Fair." Thirty questionnaires report them as "Excellent," while only ten mark them "Poor." They are more highly regarded in the larger cities than in the country, and in the 15 largest metropolitan centers reporting, in six cases they are graded as "Excellent," in 6 more as "Good," and in the remaining three instances as "Fair." Political control is much more prevalent than financial corruption, and while the latter exists, it is usually reported that while there are some corrupt members of the department, this number is not more than would be found in any other calling. The method of selection is generally regarded as satisfactory, tenure secure and compensation adequate in the larger cities. Half of the rural districts assert that there is no security of tenure and one-third complain of inadequate compensation.

Two-thirds of the rural communities provide no police instruction at all, and in the balance it appears to be casual as a rule. Twelve out of 15 of the largest cities claim to have fairly satisfactory methods of police instruction, but this only

applies to one-third out of the 45 other communities of 100,000 or over which sent in reports. Other reasons for existing defects of police systems throughout the country include lack of centralized responsibility, lack of cooperation with adjoining communities, and public officials, the fact that the retirement age is too high and the need for a unified police system. From the 46 states reporting, it appears that in 27 states there is a centralized state office of records for fingerprints and photographs, and in 19 this does not exist. The practice of sending fingerprints and photographic records to the Bureau of Investigation at Washington is very widespread. As was to be expected, more use is made of methods of scientific crime detection in larger cities than in rural communities.

It is the general opinion of the small local bar associations that there are almost no lawyers in their communities who give unethical assistance to criminals, either before or after the commission of the crime. In the case of city bar associations, however, very few of them definitely deny that there are men of this type at their bar. Most of the answers from these latter indicate that a few such lawyers exist at their bar, but that it is not definitely known that they have been guilty of misconduct. It is regarded as probable that the actual numbers of these are rather insignificant, and in general it is stated that the situation in reference to them is not anything constituting a cause for great alarm. Where facts concerning unethical lawyers are definitely known, the remedy usually taken has been that of disciplinary proceedings, or in rare instances criminal indictment. In some cases where their existence is suspected, investigations are under way or the bar association is active in watching the situation, while in others, no steps are being taken. Organizations of lawyers interested particularly in criminal law are extremely rare, and apparently of little influence. It is interesting to note that it is reported that in the rural communities the practice of criminal law in the majority of cases is not confined to a group specializing in that branch, while in the largest cities in the country this is very generally reported to be true. In 45 cities ranging in population from 100,000 to 300,000 the reports on this point were evenly divided.

Racketeering has not bothered the small communities and only a small percentage even of the large cities indicate that they have any at the present time. Of course the largest cities have had some trouble in this respect, but the instances cited are astonishingly rare. The great majority of the culprits in kidnaping cases have been apprehended, and this subject seems to have given the bar little cause for concern. Some 15 instances of reported kidnapings or threats are noted from the 145 rural communities, in practically all of which a successful prosecution followed. Twelve of the larger communities reported some cases during 1933, and also almost always reported successful action in regard to them. The phenomenal success of the Federal Department of Justice in handling these cases is a matter of public knowledge, and of course accounts to a large extent for the successful handling of this problem.

There has been a very small number of states which have adopted any part of the Code of Criminal Procedure of the American Law Institute since 1930. A number of the other states, however, report that their respective Codes included many of the provisions of the Model Code before the latter was formulated. Comparatively few of the smaller local bar associations have a committee dealing with the subject, but the majority of state bar associations have formed such committees and are more or less actively engaged in studying this matter.

The general problem of Federal vs. Local Administration of Justice has arisen only in the cities, and even there it has been rare for the United States Attorney to take over cases essentially local in their character. Where this has been done, the opinion seems about evenly divided as to whether he has been more efficient than the local prosecutor.

Only six states seem to have adopted the uniform statute dealing with the interstate rendition of witnesses and only one is reported as actively considering proposals dealing with reciprocal interstate legislation for the purpose of overcoming the obstacles of territorial jurisdiction in the administration of criminal law, or proposals for interstate compacts with the same end in view.

Many small communities assert that they feel no active need to arouse the bar on the subject of criminal law enforcement. The urban bar associations are more concerned with this, and many of them acknowledge the lawyer's responsibility in this regard and suggest that the bar associations, either state, local or national, should take the leadership in it. It was suggested in several instances that the only forces which could awaken the bar in this respect would be either dynamite or a major convulsion of nature.

Some suggestions as to matters of general interest or local importance in connection with criminal law and its enforcement other than those mentioned in the questionnaire included: Public apathy and misconception of many of the elements in the administration of criminal law; the dangers of sensationalism in the public press; separate treatment of first and young offenders; the widespread use of the third degree; the divorce of criminal process and politics; the unified court system; adequate housing for prisoners; equalizing the number of peremptory challenges available to prosecution and the defense; the fostering of cooperation between the various enforcement agencies; and improvement of the method of judicial selection.

A rather careful count of votes cast demonstrates that among the rural communities of the country the subjects listed in the last part of the tenth question may be ranked as follows in the order of importance:

1. Criminal Procedure. 2. Arousing the Bar. 3. Police. 4. Prosecutor. 5. Relation between Politics and Crime. 6. The Lawyer Criminal. 7. Racketeering. 8. Kidnaping. 9. Federal vs. Local Administration of Justice.

It is interesting to note what few changes occur in the following classification showing the relative importance attached to the above subjects by the answers received from the larger communities of the country:

1. Criminal Procedure. 2. Police. 3. Relation between Politics and Crime. 4. Arousing the Bar. 5. Prosecutor. 6. The Lawyer Criminal. 7. Fed-

eral vs. Local Administration of Justice. 8. Racketeering. 9. Kidnaping.

As it appears that the questionnaires seem to demonstrate quite thoroughly that in the opinion of the bar the problem of criminal law enforcement is primarily an urban one, a more thorough study of the criminal law questionnaires from the larger cities would seem to be warranted. It is planned to publish such an analysis in the next issue of the JOURNAL.

PROGRAM ON CRIMINAL LAW AND ITS ENFORCEMENT

Recommendations Which Will Be Presented to Association at Milwaukee Will Embody Plan for Synthesizing Activities of Legal Profession — In Their Tentative Form They Recognize That Protection of Public Is Vital Concern and That Effective Prosecutions and Elimination of Politics and Incompetency from Personnel of Law-Enforcing Agencies Are Major Considerations

BY ALBERT J. HARNO
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ON the tentative program for its Fifty-seventh meeting, the American Bar Association has reserved an afternoon to be devoted to a discussion of criminal law and its enforcement. This program, planned with approval of the officers of the Association, is the joint product of the Section on Criminal Law and the Committee on the Coordination of the Bar.

The importance of an adequate enforcement of the criminal law can hardly be over estimated. It is one of the permanent problems of any society, and it is of the gravest concern to the American people today. Indeed, the continued functioning of our democratic institutions may depend upon its solution. Economic stringency and social unrest have exaggerated the dangers in ancient evils and abuses. Intelligent members of the public are not unaware of these dangers. Many individuals and organizations—official and unofficial—are devoting their attention to the problem, and various programs of reform are being launched. Unfortunately many of these programs are poorly conceived and some are at cross purposes. There is lacking that sweep and sustained drive that could come from intelligent direction of all interested forces. Though the problem is one that vitally affects the welfare of all our people, it does not follow that all of those who seek to cope with it are fit to lead. Responsibility for leadership must rest preeminently on the American Bar.

There are many critics who suggest that the American Bar has not in recent times shown, on this or other questions of public concern, either the desire or the capacity for leadership. This is an unfair appraisal of the work of many able and high minded members of the Bar. Many individual lawyers, whether working alone or in organization, have contributed much to the cause of reform. But their work has been sporadic; it has been marked by a want of unity in plan and action. The Bar as such has lacked organization for articulate programs. The recommendations on criminal law which will be presented to the Association at Milwaukee will have in them a plan looking toward a synthesis of the activities of the legal profession.*

These recommendations, in their tentative form, recognize that protection of the public against the criminal is of vital concern, and that effective prosecutions and the elimination of politics and incompetency from the personnel of law enforcing agencies are major considerations. They present a program which involves three principal features. First, a plan of organization and coordination of work; second, a number of specific recommendations for the improvement of criminal procedure, and third, a recommendation for unity of action to rid the profession of unethical and dishonest practitioners.

The plan for better organization of work will include the presentation of a resolution that the American Bar Association recommend to the Governor of each state that he establish a permanent committee on criminal justice to be composed of lawyers and laymen charged with the duty of systematically studying, criticising and improving the enforcement of the criminal law. This committee, the plan will recommend, should maintain close contact with the committees of the state and local bar associations dealing with criminal procedure, and the personnel of law enforcing agencies, and with the United States Department of Justice.

More significant still is a proposal that the American Bar Association recommend the creation, in each state, of a state Department of Justice headed by the Attorney General or by such officer as may be desirable, whose duty it would be to direct and supervise actively the work of every prosecuting attorney, sheriff and law enforcing agency, and who would be specifically charged with

*The recommendations are printed in full in the Advance Reports which are sent out to all members previous to the Annual Meeting. They begin on page 34.

the responsibility therefor. The implications of this are far reaching.

The prosecuting attorney probably yields more power over law enforcement than any other individual. He exercises immediate and summary authority over many human beings. Yet we have permitted certain glaring defects to exist in the political methods by which he is chosen and in the administrative system under which he operates. It has been demonstrated repeatedly that the method of popular election does not always secure able men for this office and that it too often ushers in those who are more interested in political advancement than in public welfare. While subject to no direct superior governmental control or supervision, prosecuting attorneys are often subjected to political influences which have a sinister bearing on the operations of their offices. Often the prosecutions which they bring in the interests of the people are poorly prepared and poorly tried. Frequently the records of the office are slovenly kept. The consequence is that the public not only is often badly represented but it cannot even obtain a check on how the office is administered.[1]

A Department of Justice of the kind to be proposed should make law enforcement much more efficient. It would include a central bureau equipped with records and with investigators similar in character and qualifications to those now attached to the Federal Department of Justice. The recommendations emphasize the necessity for the adoption of centralized, modern, and non-politically controlled methods of criminal investigation and prosecution.

As a further step toward the coordination of an effective program, it is proposed that the American Bar Association recommend to each state and local bar association the establishment of a committee on the reform of criminal procedure and a committee on police and prosecution. If this plan is approved, it would foster a nation-wide program under which state and local bar associations could cooperate with the American Bar Association in formulating reforms in criminal law and procedure.

The second feature of the plan proposed includes specific recommendations for the improvement of criminal procedure. It is recommended that the state and local associations study the Code of Criminal Procedure prepared by the American Law Institute and that improvements in procedure be based on a thorough consideration of that Code. This Code was drawn by a committee of experts, who spent several years of labor in drafting it. It is the most carefully conceived and thoroughly executed code on criminal procedure ever drafted in this country, and it forms an excellent model for the drafting of laws on criminal procedure in any state.

The recommendation is made that the following provisions of the Code be given immediate and special consideration:

1. That the accused should have the privilege of electing whether he shall be tried by a jury or the court alone, except where a sentence of death may be imposed.

2. That alternate or extra jurors should be impanelled to serve in case of the disability or disqualification of any juror during trial.

3. That trial should be permitted upon information as well as indictment. Where indictment by grand jury remains a constitutional requirement, waiver should be allowed. The Association recognizes that in sound practice a grand jury indictment may be desirable on some occasions.

4. That provision should be made for jury verdicts in criminal cases by less than a unanimous vote except in the case of certain major felonies.

With reference to these provisions let us examine the relevent sections of the Code of the Institute more in detail. Section 266 of the Institute's Code provides for waiver of jury. It reads as follows:

"In all cases except where a sentence of death may be imposed trial by a jury may be waived by the defendant. Such waiver shall be made in open court and entered of record."

The constitutions in a number of states have express provisions for waiver of jury trial.[2] In a few states constitutional provisions permit waivers in crimes below the grade of felony.[3] Some states have statutes authorizing waiver.[4] In a number of states provision is made by statute for trial without jury unless demanded by the defendant.[5] In a few jurisdictions where there are no constitutional provisions authorizing waiver, there are court decisions permitting waiver in some situations.[6] In three jurisdictions the courts have decided against waiver.[7]

The provision of the Institute Code dealing with alternate jurors is Section 285 which reads as follows:

"Whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impanelled and sworn, direct the calling of one or two additional jurors, to be known as 'alternate jurors.' Such jurors shall be drawn from the same source, and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If, before the final submission of the cause, a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his place in the jury box. If there are two alternate jurors, the court shall select one by lot, who shall then take his place in the jury box. After an alternate juror is in the jury box he shall be subject to the same rules as a regular juror."

A number of states have statutory provisions which contain the substance of this provision.[8]

The following sections of the Institute Code

1. See excellent statement, Caldwell, *How to Make Prosecuting Effectual* (1932) 16 J. Am. Jud. Soc. 73. In this article the author proposes a plan involving the choice of prosecutors by the Governor, on the advice of the Attorney General, from an eligible list of three lawyers to be chosen by the bar of the district.

2. Arkansas, California, Maryland, Minnesota, North Carolina, Oklahoma, and Wisconsin.

3. Idaho, Montana, Vermont, and Virginia.

4. In all cases: Connecticut, Indiana, Maryland, Michigan, Ohio, and Wisconsin. In all but capital cases: Washington. In misdemeanor cases: Arizona, Arkansas, California, Delaware, Florida, Idaho, Illinois, Kansas, Louisiana, Missouri, Montana, Nevada, New Jersey, North Dakota, Ohio, Texas, Utah, Virginia, West Virginia.

5. Colorado, Georgia, Kentucky, Mississippi, Nebraska, New York, North Carolina, Ohio, South Carolina.

6. United States, Alabama, Georgia, Illinois, Massachusetts, Nebraska, New Hampshire, New Jersey and Tennessee.

7. Iowa, Pennsylvania, and Rhode Island. See commentaries, Am. L. Inst. Code of Crim. Proced., pp. 807-811.

8. Arizona, California, Idaho, Nevada, Ohio, Oregon, South Dakota, Utah, Washington, Wyoming. Michigan and Colorado also have statutes dealing with this subject. See commentaries, Am. L. Inst. Code of Crim. Proced., pp. 873-874.

deal with prosecutions by information or indictment:

"Sec. 113. Prosecution by information or indictment. All offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment or by information.

"Sec. 114. When grand jury to be summoned. No grand jury shall be summoned to attend at any court except upon the order of a judge thereof when in his opinion public interest so demands, except that a grand jury shall be summoned at least once a year in each county."

The constitutions vary widely in their provisions on this subject. In a number of states constitutional changes will be necessary before their laws will conform to the sections quoted.[9] The constitutions in some states have provisions that the legislature may modify or abolish the grand jury.[10]

On the subject of verdicts in criminal cases by less than unanimous vote, the Institute Code has the following provision, Section 355:

"In capital cases no verdict may be rendered unless all the jurors concur in it. In other cases of felony a verdict concurred in by five-sixths of the jurors, and in cases of misdemeanor a verdict concurred in by two-thirds of the jurors may be rendered."

On this subject there are again a variety of constitutional provisions, statutes and judicial decisions.[11] The constitutions of a few states require that verdicts in criminal cases must be by unanimous juries.[12] Constitutional provisions in other states permit a departure from the unanimous rule.[13] Some constitutions provide that the right of trial by juries shall remain inviolate but a verdict by less than a unanimous jury in civil cases may be valid.[14] Other constitutions provide that the right of trial by jury shall remain inviolate, and by decision this is construed as requiring a unanimous verdict.[15] A few states have statutes which, in accordance with their constitutions, permit verdicts in some cases by less than a unanimous jury.[16] Some have statutes requiring unanimous verdicts.[17]

Another proposal to be submitted to the Association is that the American Bar Association recommend that a criminal defendant offering a claim of alibi or insanity in his defense shall be required to give advance notice to the prosecution of this fact and of the circumstances to be offered and that in the absence of such notice a plea of insanity or a defense based on an alibi shall not be permitted upon trial except in extraordinary cases in the discretion of the judge. The American Law Institute Code has no provision covering the alibi defense. Section 235 of the Code dealing with the insanity plea is as follows:

"Where the defendant pleads not guilty and purposes to show in evidence that he was insane or mentally defective at the time of the alleged commission of the offense charged, he shall at the time he pleads, or at any time thereafter, not later than four days before trial, file a written notice of his purpose. If the defendant fails to file such notice he shall not be entitled to introduce evidence tending to establish such insanity or mental defect. The court may, however, permit such evidence to be introduced where good cause for the failure to file the notice has been made to appear."

That this provision is a needed improvement in our criminal procedure seems apparent. A similar provision for the alibi defense is likewise a desirable reform. It is a common occurrence, indeed, that the prosecution comes to grief through the sudden injection of one of these defenses.

One more proposal is made on criminal procedure. A law is recommended which would permit the court and counsel to comment to the jury on the failure of a defendant in a criminal case to testify in his own behalf. Beyond question this proposal presents a debatable issue. It is said by some that this provision would take away the defendant's constitutional privilege by indirection. On the other hand, there are many who believe that the constitutional privilege against self-incrimination, in the light of modern safe guards thrown about the criminal, is a legal impediment to justice, and that we should not extend the privilege by interpretation beyond the bare requirement of the constitution.

Finally, and this is the third principal feature which is emphasized in the program, the proposal is made that the American Bar Association recommend that the state and local bar associations concentrate actively on ridding the profession of dishonest and unethical practitioners. The plan is that the Association emphasize this as a national program and that it bring its influence to bear on state and local organizations to the end that they diligently investigate all complaints and, where the facts warrant it, move promptly to trial with disciplinary proceedings.

This proposal could be regarded as a sop prepared for public consumption, and it could be turned into that and nothing else. It has potentialities, however, for much that is good. The outcry against the lawyer criminal exaggerates his importance. Those who cry the loudest know least the difficulties involved. Yet the profession needs a thorough purging. We lawyers close our eyes and lift our voices is platitudes about every criminal being entitled to counsel whose duty it is to defend the criminal to the best of his ability that the facts may be clearly proved. This is nothing more than a red-herring. The intelligent layman is not misled. He knows or suspects (and I dare say even some lawyers know or suspect) the travesty on justice that too often passes for the trial of criminal cases in our cities, if not in country districts. The proposal to rid the profession of unethical practitioners is one the Association should take seriously and proceed to put into effect quietly, dispassionately and intelligently.

9. See commentaries, Am. L. Inst. Code of Crim. Proced., pp. 414-434.
10. Alabama, Colorado, Illinois, Indiana, Iowa, Mississippi, Nebraska, North Dakota, South Dakota, Wyoming.
11. See commentaries, Am. L. Inst. Code of Crim. Proced., pp. 1026-1031.
12. Maine, Maryland, North Carolina, Utah, Vermont, Virginia.
13. Idaho, Louisiana, Montana, Oklahoma, Texas.
14. Arizona, Arkansas, California, Idaho, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Ohio, South Dakota, Washington, Wisconsin.
15. Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Tennessee, Wyoming.
16. Idaho, Louisiana, Montana, Texas.
17. Louisiana, New Mexico, South Dakota.

Signed Articles

As one object of the American Bar Association Journal is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this Journal assume no responsibility for the opinions in signed articles, except to the extent of expressing the view by the fact of publication, that the subject treated is one which merits attention.

PROJECT OF AN INSTITUTE OF LEGISLATIVE SCIENCE

Legislative Law Is Becoming Increasingly Important in This Country, and the Development of Legislative Science Is Necessary to Provide Scientific Basis for Flood of Detached Enactments, to Make Possible the Revision and Consolidation of Legislation Already Enacted and the Assimilation of New Growths, and to Lay Scientific Foundation for General Codification of Public and Private Law

By Albert Kocourek
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I.

Of the evils which afflict human society some of the most serious are those which result from the *form* of our law.[1] It seems no exaggeration to say, that quantitatively, these social detriments are comparable in social significance to those produced by that most striking of legal phenomena, crime itself.

What we mean here by the *form* of the law deals with the following elements: (a) the existence of rules of law in written form; (b) clarity of the content of these rules and of their limits, *i.e.*, what they include and what they exclude; (c) completeness of these rules with reference to the subject-matter of law; (d) adequate symbolic expression of this complex of rules; and (e) accessibility of this apparatus to the end that the specific rule required may be easily discovered.

As to each one of these elements of form, the defects are notorious. Like the law of the Mussulmans, the Anglo-American system still persists, for the greater part, in the immature form of *ius non scriptum*. Notwithstanding the doubtful contribution of legislation and the sum total that may painfully be extracted with any degree of certainty out of case law, it is still true, that for an overwhelming number of legal problems which may be projected by any expert in any field, specific answers can not be found in the literary monuments of the law of any one state. It is unnecessary to enter on a discussion of these elements of form. The mere specification of them suffices to suggest to every lawyer the utter inadequacy of our law in its present form, to quadrate with the needs, and accomplishments in other fields, of modern society.

The social evils which flow from the form of our law are accepted as inevitable. Even statute law is not regarded as a definitive statement of a body of rules ready for concrete application, but rather as a rough outline of legislative ideas, especially in matters of detail. The courts are invoked to point out the full scope of the legislative purpose in specific applications presented in litigation. This view is reflected in various definitions current in recent decades, which limit law to what is recognized and applied by courts of justice.[2] The courts are, in effect, the third and the highest legislative chamber, with the power on constitutional questions to exercise a veto. Whatever its merits in other respects, this process is very costly.

While statute law exhibits the defects of form in our law more conspicuously than does the *ius non scriptum*, especially in that enacted law presents, or can present, the logical blemishes of contradiction, ambiguity, and incompleteness, in a strict sense, nevertheless, taking the *ius non scriptum* of any state as a whole, each of these logical defects is found on a large scale.

For the bodies or systems of law derived by imposition or reception from the English common law, the creative force in the making of private law (in contrast with public law) resides principally in the courts. This preponderance of the courts over the legislature has continued so long and is so familiar, that it seems improbable that the center of gravity will ever drift. Yet, we think it may be reliably predicted that within the next two generations, the law will be codified in every state in the United States.

The codification movement in America suffered a heavy blow by the adoption of the New York procedure codes. A subject-matter that should and could be one of relative simplicity became overlaid with an unnecessary and highly complicated mass of detailed regulation. The common law system of procedure, deficient as it was, was replaced by something infinitely worse. The immediate result was not simplicity but a harvest of litigation. The procedure side of the law will be generally the last to yield to rational treatment. The failure of the New York procedure codes distracted attention from the success of the non-procedural codes. For the level attained in legislative art and science, the non-procedural codes have marked a distinct gain in the form of the law. The level attained, however, in these codes leaves much yet to be accomplished to satisfy the requirement of scientific statement.

It is not our purpose to discuss codification, although we believe it will and must come; but whether codification on the European scale comes within fifty years or never, it is important to observe that legislative law is becoming increasingly important and the development of legislative science now, in this country, is necessary for the following reasons:

1. To provide a scientific basis for the detached enactments that are pouring in large streams from our numerous legislative fountains, federal, state, and local.

2. To make possible, revision and consolidation of the large masses of legislation already enacted, and an

1. The eminent jurist, Henry Terry, writing fifty years ago, said: "It is plain that the condition of our law, as to its form, is fast becoming unbearable": Terry, Some Leading Principles of Anglo American Law (Tokyo, 1884) Preface p. v.

2. "The law of the State or of any organized body of men is composed of the rules which the courts, that is, the judicial organs of that body, lay down for the determination of legal rights and duties": Gray, The Nature and Sources of the Law (2d ed. 1921) p. 84.

orderly method of assimilating new growths of legislation.

3. To lay the scientific foundations for general codification of public and private law as a measure of practical prudence. It is not unlikely that the demand for codification, if and when it comes, will descend upon us with a suddenness, leaving no time otherwise for adequate preparation. The result would be very unfortunate. It would be costly beyond calculation and it would involve the substitution of new continents of legal uncertainties for old continents already to a large extent, but yet insufficiently, explored.

In an effort to remove some of the evils of the form of our law and perhaps also in anticipation of forthcoming general codification, the American Law Institute has produced and is producing codified statements of the law in such important areas of the law as Agency, Conflict of Laws, Contracts, Torts, Trusts, Land law, etc. The statements already presented have encountered criticism as well as praise, as might be expected. In any event, whatever their defects in form or in substance, it can little be doubted that this work reaches a level higher than any ever previously attained in this country and that it is the best practically attainable at this time. The Institute, in offering this important contribution to the bench and bar, is not making, and so far as we know has never made, proposals for legislative adoptions.[3] It is offered on its own merits, with the expectation that the bench and bar will accord to it that professional respect which is the legitimate right of experts. We believe, however, that the Institute will not reach the full measure of its fundamental purpose until it proposes and obtains legislative adoptions. In any case, the Institute statements will stand as valuable materials ready for use if the existing need of general codification is translated into future action.

To overcome the defects in the form of our existing law and to make possible an enlightened legislative method for the future, there is need of an American Institute of Legislative Science. Bentham, thinking and working entirely alone, more than a hundred years ago laid some of the foundations of such a science.[4] In Bentham's time the legislative style was that of the conveyancer. Since his day legislative style has lost much of its heaviness, but the logical defects still remain. For the future, great changes in the literary form of legislation may also be expected. When legislation reaches a scientific level, it is probable that the straight narrative form of legislative statement will be abandoned. The legislation of that era will resemble a series of charts blocked out according to rubrics expressing logical sequences and permutations quickly visible to the eye and furnishing by their own mechanical structure a rapid logical interpretation showing at once what is included and what is excluded. Bentham's remarks and criticisms are chiefly directed to the defects of a narrative form of legislation, but it is a curious fact that it is impossible to name any other writer in any country who has produced any systematic treatise on legislative science as distinguished from legislative art or practice. Efforts to build up a purely formal legislative science began and ended with Bentham.

Not only is this subject one on which literature is substantially silent, but it is the accepted view that any lawyer competently familiar with the technical features of a subject-matter in law is also for the same reason competent to draft legislation on that subject-matter. The fallacy of this notion can be demonstrated by reference to hundreds of thousands of concrete legislative instances. Reference to the various uniform acts adopted in America, will suffice to demonstrate our point. These acts were drafted by acknowledged experts. Not a word can be said against the technical legal competency of these experts, and yet what a spawning of litigation have these acts produced! *We put it down as a fundamental premise, that a legislative enactment which requires litigation to ascertain its meaning raises a powerful presumption against the success of the draftsmanship.* This presumption is accentuated when the attempt is made to restate law or make it uniform. The explanations for the results which followed adoption of the uniform acts, we believe, are chiefly these: (a) the draftsman with complete and accurate knowledge of his subject with all of its background, often stated the statutory rule in a form entirely too laconic. He assumed that his expertness was a common professional possession or that the average professional reader would read into his concise formulas the unexpressed common law background. (b) The judges labored under the same difficulties as did the practitioner and since the formulas presented to the courts submitted of various logical interpretations (apart from their common law background) the result was numerous conflicting interpretations, and failure to achieve uniformity on crucial points.

It is supposed that this lack of success in draftsmanship is due to the impossibility of defining ultimate ideas; that our language medium is wanting in precision; and that no mind can envisage all the possibilities of fact that enter into legislative statement. We may admit that these factors present points of great difficulty, but does anybody know that these difficulties can not be, if not wholly evaded, at least reduced to an extent that will make litigation unnecessary in the great bulk of cases, to ascertain the legislative meaning? To say that this program is impossible of attainment is to surrender to a pessimism that has no verifiable support except in the legislative failures of the past.

What is proposed here is not another institute of comparative law, of which there are already several[5], in France, England, Italy, and in other countries, but rather an institute which will deal chiefly with the scientific problems of (a) form and (b) substance in legislation.

Problems of form in legislation will deal principally with the translation of legislative ideas into a language vehicle of such precision that through the language medium the original ideas will be successfully reproduced. Problems of substance in legislation will deal principally with the justification of legislative ends and the successful translation of legislative purpose into administrative and social behavior. Problems of form will require the aid of experts in symbolism, logic, and analytical jurisprudence, as well as the technical legal expert. Problems of substance will require the

3. Parts of the draft of criminal procedure have been adopted in various states.

4. See Bentham, Works (Bowring's ed. 1843) passim and especially "Nomography, or the Art of Inditing Law." Vol. III, pp. 231-288. The writings of Bentham, including numerous unpublished MSS., are a mine that deserves to be fully explored for his ideas on legislative art and science.

5. Société de législation comparée (founded in 1869); Society of Comparative Legislation (founded in 1896); Académie internationale de droit comparé (founded in 1925); L'istituto di studi legislativi (founded in 1927); L'institut de droit comparé de Lyon (1922); L'institut de droit comparé (Bruxelles, 1908); Die internationale Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre (1895); American Institute of Comparative Law and Legislation, Mexico, (D. F.), Francesco Cosentini, General Director.

In view of the existence of these organizations there is no need at present of a separate department dealing with comparative law. The researches of some of these already existing organizations are of great value and among them the Istituto di studi legislativi deserves special mention because of its personnel and the amplitude of its work.

aid of experts in philosophy, ethics, sociology, political science, economics, as well as experts in the technics of law.

II.

We shall now attempt to state briefly the principal departments of research of such an institute in the following enumeration:

I. *Social Diseases:* Social tendencies and conditions which are sources of discord or which affect litigation: (a) catalogue and description of social diseases; (b) etiology (causes); and (c) prophylaxis and remedy.

The chief social diseases are proverty, crime, disease, incompetence, and ignorance. How far, if at all, the State will concern itself with these evils depends on the nature of the State, the extreme forms being the *laissez faire* State and the Police *(Polizei)* State for the centuries which have passed, and the Welfare State in contrast with the Industrial State for the era just beginning.

Crime has always been combated, but only within the last two centuries beginning with Beccaria, has crime been studied as a social phenomenon, rather than merely as a legal phenomenon. Such social evils as poverty, disease, and ignorance, which often have a close connection with criminal behavior, have only somewhat incidentally come to the notice of the State. The hopelessly sick and the destitute have not in general, and especially not, in the *laissez faire* régimes prior to the industrial era, come to the notice of the State, except in the extreme case where elimination from society was the only remedy that could be applied, as shown typically in the bodies of legislation dealing with asylums for the insane and with poorhouses.

The department of social diseases has received very extensive treatment, in contrast with the department next to be enumerated. The task here will be to bring order out of a literary superabundance and to arrive at conclusions upon which definite programs of legislation may be based.

One of the most striking facts to be noted in this connection is the nearly absolute disregard by the State of scientific research and production touching legal and social problems. These researches are, indeed, noticed by other investigators for the purpose of similar researches, but, for the rest, these contributions produced in vast abundance and issuing principally from the universities, lie buried in numerous books and periodicals, like so many corpses in a graveyard. Much of this work, purely voluntary and unremunerated, is not merely competent and scholarly, but of immense practical value. There is lacking, however, any organ, official or unofficial, prepared to give systematic consideration to these studies or to forward their use and application. A more stupendous intellectual and social waste can hardly be imagined.

This department will be confronted by great difficulties due to the complexity of its subject-matter and to political inertia. Solution of these problems by legislative means will depend in a very large measure on the political form of the State and political conditions where such legislative measures are proposed.

For a quarter of a century there has been a world-wide relaxation of the obstructive force of political inertia and opposition in dealing with the many problems of social disease by such typical examples of social legislation as statutes governing workmen's compensation for industrial harms, purity of foods and drugs, safety appliances, unfair trade practices, package weights of bread, compulsory automobile insurance, minimum wages, etc, etc. All of these statutes aim directly at isolable evils, but some of the more recent depression emergency statutes reach a legislative level never before attained or considered attainable under our form of constitution, in that they seek to regulate in detail the internal operations of manufacture, trade, and transportation for the purpose of distribution of employment, increased earning power, and maintenance of price levels.

II. *Legal Diseases:* Legal rules and institutions which directly and indirectly produce harmful social results.

All legal rules produce social reactions. Sometimes the social reaction becomes more harmful than the evil sought to be combated. An outstanding illustration of a large-scale social reaction produced by law was the late liquor prohibition legislation. It seems to be generally conceded that the reaction of evil in this legislation outweighed the social benefits achieved.

There is probably no existing legislation that produces only socially beneficial reactions. The need of law and of legislation can not, however, be impeded by this fact. Acceptance of this proposition, namely, that certain evil reactions may be expected to follow in the train of legislation, makes unnecessary here any long specification of legislation that needs re-examination for the purpose of lessening the reactions of legislation which often impair and sometimes defeat its purpose. Our procedural systems and our taxation systems may be instanced as especially worthy of examination from this standpoint.

Legal diseases are of two classes: (a) those manifested in economic and other purely social reactions and, perhaps, especially, where one economic class is favored at the expense of another; and (b) where the nature of the law is such that litigation is promoted without compensating advantages. The uncertainty of law is one of the greatest factors in stimulating litigation and likewise is one of the greatest legal diseases.

Nearly all legislation is conceived from the point of view of some benefit to be achieved, but generally without sufficient regard to the economic and other reactions which will follow. A further defect of nearly all legislation is that it is not based on statistical information, which often would furnish a basis of sound legislative judgment. A final defect is that there is little, if any, official machinery available to test the working of law in actual life. In all of these matters, the State is far behind the practice and methods of any corporation which markets a technical product.

It may be suggested that the social sciences are much more complex than the technical sciences and that scientific methods in legislation are impossible because of the large numbers of persons affected by legislative law. The defense of greater complexity must be admitted. Against the other defense, it may be replied that experiments in legislation, on any scale desired (constitutional law apart) may be effected, and even large-scale experiments are susceptible of study as to the results on smaller scale testing.

III. *Morphology of Government and Machinery of Law:* This division will concern itself purely with questions of public law. It will cover the whole range of public law—taxation, police, administration, judicial procedure, etc. It will also, perhaps, deal with certain fundamental questions of government—for example, the constitutional forms of government, the changes

which the industrial era suggests in the scope and substance of a constitution for this era, the problem of flexibility in arriving at constitutional changes, the question whether for the purposes of the federal government there should not be some four or five federal areas instead of the forty-eight states. Our present constitutional arrangements have in the main served us well, but nothing is more certain than that after the lapse of nearly a century and a half, changes will come, as, indeed, they already have come, chiefly by judicial legislation, in the original constitutional structure. Nothing is alien to science but yet as a matter of practical expediency, such an institute as we propose probably must confine its studies and activities (at least those initiated by itself) to such matters as are not in the arena of political or economic debate. It should not, for example, attempt to change the form of the State; it should not take sides on the perpetual question of the justification of tariffs; it should not pass judgment on the conflicts of economic classes; it should not undertake to suggest the proper basis of money, etc., etc. In a word, it must avoid all sharply debated questions of policy relating to politics, economics, or morals.

Less fundamental, and also less a matter of doubt as to the scope of an institute of legislative science, are such problems as the proper territorial divisions for legislation, justice, police, administration, and taxation, the methods of selection of officers, the question of the separation of governmental powers, and hundreds of others dealing with the details of government.

In these fields there is apparent everywhere prodigious waste, injustice, and failure of purpose. Nothing is more costly and inefficient than political government. Here, also, an enormous literature is already in existence on all of these problems. This literature needs to be sifted and organized and to be translated into concrete proposals, but the difficulties here of raising the present governmental level are well-nigh insuperable. Tradition and vested political and economic interests will probably be found so strong in their obstructive force as to resist all efforts to introduce large-scale fundamental changes in government. The path of peaceable achievement will be limited probably to detailed changes at isolated points, except in times of national crisis. The changes introduced in times of crisis are prepared so hurriedly that whatever their success from the legislative standpoint to meet the needs of national emergency, they do not survive the period of crisis in their original form.

IV. *Methods of Social Control:* Limits, devices, direct coercion, indirect coercion, the insurance principle, etc. The basic problem here is, in what way can a desirable end be best achieved by means of legislation. There is no published systematic treatment, so far as we are aware, on this subject. The legislator's first impulse in creating a duty is to make the breach of the duty a criminal offense. This is a primitive reaction and it often ends in futility. Next, the legislator thinks of civil coercion. We can best illustrate our meaning here by an example. Only a few years ago industrial harms were compensated, if at all, by resort to civil actions. The result was that court calendars became clogged, much suffering resulted to poor persons who had sustained personal hurts, and very often excessive and fraudulent judgments were entered against the employer. The insurance company early entered into this picture without improving the underlying situation. The workmen's compensation laws, borrowed from European models, radically removed the existing evil and no one now doubts that the solution attained has worked a social betterment.

The principle of direct coercion predominates as a legislative principle, but there are various others which for particular purposes have greater efficacy. Much of the inefficacy and waste of law may be alleviated by scientific legislative methods of control. We hasten to interpose that more effective legislative levers do not mean necessarily an increase in governmental personnel or the multiplication of bureaus. The taxation system, for example, we believe can be made to yield better and more just results by radical simplification of the existing governmental machinery. This fact, namely, that there are legislative levers other than that of direct coercion, has hardly come to the level of legislative understanding. In our judgment, it is one of the greatest importance and deserving of detailed study.[6]

V. *The Written Device of Social Control:* Legislative statement, codes, statutes, amendments to statutes, revisions, the form of judicial opinions, digests and other finding devices, definitions, classification, etc. This field covers the entire written apparatus from beginning to end of declarations of law with the object that these declarations of law may have a certain meaning and that they will be easily accessible to legal experts.

Legislative statements are not commonly free of one or more of the logical defects of ambiguity, contradiction, and incompleteness. This is due to the fact that legal draftsmanship has not reached a scientific level and to the belief that a spoken language can not be adapted to the needs of precision. We can only indicate briefly what we believe are some of the necessary essentials to remove a maximum of the legislative defects inherent in the great bulk of written declarations of legislative law.

One of these essentials is a complete catalogue of the persons, acts, events, jural things, interests, and jural categories which are noticed by the law for any purpose. Many thousands of legislative instances are available to show that legislation eventuates in litigation because the draftsman did not have in mind the range of ideas upon which his legislative draft might operate.

Still another essential is an analytical dictionary of law terms, showing the various meanings of these law terms in numbered and orderly sequence, giving preference always to the first definition entered, unless the draftsman indicates another number of the series (for example: if A does X he shall thereby *waive* (2) Y). Such an analytical dictionary (which would need, of course, several years of intense study by many experts for preparation) would also be of inestimable service to the practitioner, used in the manner indicated, in the drafting of wills, deeds, assignments, releases, and contracts. These instruments are now overloaded with redundant verbiage by which the draftsman seeks to include the desired meaning by the use of synonyms.

Substantive non-legal terms submit of *ad hoc* definitional treatment wherever necessary. Thus, for example, the word "House" is a non-legal term. It would be better that the draftsman define what he means rather than lay the foundation for even one lawsuit to determine whether it includes a barn, a shed, garage, etc. The common vice of draftsmanship is that the draftsman uses his terms in a literary sense without thought

6. For a preliminary study of social control by legal levers, see Kocourek, Four Principles of Legislation in Studi filosofico-giuridici, dedicati a Georgio Del Vecchio (Modena, 1931) Vol. II.

of the limits of his terms. Each word in a statute needs careful inspection so that the precise meaning will be conveyed to the reader. Form words[7] such as and, or, etc., may also be treated by symbols. Thus the common word *"and,"* as in the phrase x *and* y, might mean (1) *with,* (2) *or,* (3) *or* and *with (i.e.,* one or the other or both*)*. If the third meaning is intended by the draftsman, he could write the phrase as follows: x and (3) y, or x and ³ y.

We can not here enter on further detail of the matter and, least of all, on the other devices connected with written declarations of law, but we wish to affirm the view that the hopeless belief that written law can not be very considerably relieved of logical defects, is entirely unfounded and is based on nothing more than the inartificiality of the present state of legislative art.[8]

VI. *Ends of Social Control Through Law:* This department will deal with the evaluation of proposed legislative prescriptions and will employ the critical aid of experts in economics, political science, sociology, social ethics, and philosophy of law.

VII. *Statistics:* The use of statistical information will be necessary not only for the preparation of legislation, but also to check its effects after enactment.

VIII. *Drafting:* An expert drafting department separate from, but in constant touch with, the others, will be necessary.

IX. *Liaison, Promotion, and Publication:* The chief function of this department will be to establish connections with private groups *(e.g.,* civic organizations) for the development of public support of definite programs of legislation. Even good legislation needs to be promoted and it will often be desirable that enacted legislation be advertised to the people. The extent to which knowledge of new law reaches the people upon whom it operates is entirely insufficient. No more powerful lever to stimulate obedience to law can be found than wide publicity. An institute of legislative science will also need to issue various publications of its researches. An annual volume is the minimum of what would be necessary on the smallest scale of practical accomplishment.

For the attainment of legislation where and when needed, this department is more important for practical achievement than all the others. The success of an institute of legislation will be measured directly, not by its scientific studies or its drafting of legislation, but by its power to deal with the various economic, social, and political factors which make legislation of any kind possible.

III.

This, in slenderest outline, is our conception of the need and the scope of an institute of legislative science. We are sensible of the fact that it presents, while not an impossible program, yet one hardly realizable as a whole, on any considerable scale. There are two ways that such an institute might be brought in operation: (a) by subvention of the various states, and also the federal government, in direct contact and coöperation with their legislative bureaus[9]; (b) by private endowment. Both ways would meet difficulties, especially of a financial kind. To operate a legislative institute with the greatest potentiality of successful achievement would require an endowment greater in amount than could easily be obtained. Nevertheless, such an institute is still possible on a scale comparable to the American Law Institute, the National Conference of Commissioners on Uniform State Laws, or the American Judicature Society. Properly organized, even such an institute might be expected to produce very valuable long-term results which would hasten perhaps by decades the changes to be expected in government and law in a progressive evolution. Whatever the scale of activity of such an institute, an extended incubation period of intensive research and preparation would be necessary before practical results would be possible. In some of the departments the labor of research would lie in fields hitherto wholly unexplored.

The desirable legal changes that probably could be effected by an institute of legislative science would include, among others, the following:

1. Codification of all law on a scientific basis.
2. New political machinery and methods based on expertness and democracy.
3. Criminal law largely reduced to prophylaxis.
4. Civil litigation greatly reduced in volume.
5. Judicial procedure completely reformed and simplified.
6. Negligence law reduced to a minimum.

7. For a convincing demonstration of the great importance of form words (articles, prepositions, and conjunctions) with an explanation of thirteen methods used by the courts for fixing their meaning, see Bryant, English in the Law Courts (Columbia University Press, 1931). This valuable monograph deserves to be better known.

8. Mr. David V. Lansden, of Cairo, Illinois, at considerable cost in time and effort, has recently made word counts in various statutes in a study of the use of English in legislation. His findings and conclusions have not yet been published, but through Mr. Lansden's courtesy we have had an opportunity to inspect the word count in the Negotiable Instruments Law. In that Act there are 983 different words used 10,296 times. The nine words occurring in the order of greatest frequency are the following: the, to, of, is, or, a, be, in, and. The word "the" is used 891 times and the word "and" is used 190 times. It is easy to understand that if terms have more than one meaning, it will be necessary for precision to isolate and symbolize the variants.

9. In only a few states is there wanting some form of legislative reference service. See State Government, Jan. 1931 (published by The American Legislators' Association).

Deaths of Members Reported

Judge Lois Dale, of Texarkana, Ark., on June 17. Miss Dale was County Judge of Miller County (Ark.) and the only woman who ever held the office of County Judge in her State.

Charles Strauss of New York City, on April 11. Mr. Strauss had practiced law in New York City for fifty-nine years. He was one of the organizers of the New York County Lawyers Association, was its first secretary, and its president from 1921 to 1923. His gift of $100,000 was the initial contribution to the fund for the erection of that Association's building. Mr. Strauss had been a member of the American Bar Association for over twenty-five years.

Clarence M. Lewis, New York City, May 3. Mr. Lewis was the author of several law books, and at the time of his death was a member of the Editorial Council of the United States Law Review.

Ira Kent Wells, former United States District Judge for Puerto Rico, died April 2 at San Juan, P. R. Judge Wells was born in Seneca, Kan., in 1871, and following his graduation from the Law School of the University of Kansas, practiced law with his father in Seneca. During the war he was a major in the Judge Advocate General's office, and later he was Judge Advocate General of the Panama Canal Department and Provost General of the department. In 1925 he was appointed United States Judge for Puerto Rico, and resigned from the Bench last January.

Hon. Clarence Hale, retired U. S. District Judge for the district of Maine, on April 9, at his home in Portland, Maine. Judge Hale was born in Turner, Me., in 1848, was admitted to the Bar in 1871 and engaged in practice at Portland in association with the late Thomas B. Reed. He was appointed to the Federal Bench in 1902.

John D. Warfield, Denver, Col., May 21.
Sanders McDaniel, Atlanta, Ga., May 2.
Arthur C. Fraser, New York City, May 19.

MILWAUKEE MEETING ENTERTAINMENT PROGRAM

By James Maxwell Murphy
Member of Wisconsin Bar; Staff Writer for Milwaukee Sentinel

IN keeping with its promise to offer simple but adequate entertainment to the members of the Association at the forthcoming convention, Milwaukee now presents its program for the inspection of the delegates.

The following schedule has been prepared and briefly summarized so that members may tell at a glance what is in store for them:

Aug. 20-25—Uniform State Law Commissioners. Dinner Dance, Milwaukee Country Club; private dinners for Commissioners; entertainment for Commissioners and ladies at the Chalet, Saturday.

Sunday, Aug. 26—Trip to Madison, Executive Committee and Council of American Bar Association, Commissioners on Uniform Laws. Entertainment at Madison in charge of Mr. E. E. Brossard, Revisor of Statutes, and Justice John W. Wickhem.

Monday—Dinner for Executive Committee, American Bar Association and guests, at Milwaukee Club; sectional meetings and dinners.

Tuesday—Day in Milwaukee, Wisconsin Club, Chauncey Yockey, Chairman; President's Reception, dance, by American Bar Association.

Wednesday — Concert, Milwaukee Philharmonic Orchestra, Mrs. Herman Uihlein, soloist, and tea, at Milwaukee Country Club, in charge of Mrs. Carl B. Rix; sectional dinners and dances.

Thursday—Garden Party, swimming, golf and tennis, at Pine Lake and Chenequa, ladies, in charge of Mrs. J. V. Quarles; dance after address, Wisconsin Club.

Friday—Style show, garden parties, Fox Point, and tea Fox Point Club, in charge of Mrs. E. B. Shea; annual dinner, American Bar Association.

Saturday—Milwaukee Yacht Club, headquarters, sails on private yachts; Tercentenary trip to Green Bay by motor, in charge of T. L. Doyle and Charles M. Morris.

Sailing on Pine Lake in the Heart of the Waukesha Lake County. (Courtesy Milwaukee Sentinel)

The dinner dance at the Country Club will take the Commissioners and their ladies to one of the most beautiful institutions of its kind in the United States. Situated in the rolling country of the exclusive River Hills district, it commands a wide view of the surrounding countryside, and the meandering upper reaches of the Milwaukee River, which flows through the grounds. The club house, a colonial structure of simple dignity but commodious space, has been described as "the finest in the Northwest."

The building and its adjacent grounds contain comfortable lounges, colonnaded verandas, terraces overlooking choice vistas, a swimming pool, tennis courts and an unsurpassed golf course. The club is noted for the excellence of its cuisine and appointments.

On Sunday the Executive Committee, the Council, and the Commissioners will be entertained at Madison, the capital of the state, by E. E. Brossard, Wisconsin's scholarly revisor of statutes, and Justice Wickhem, one of the youngest members of the Supreme Court.

The capital city, famed for the struggles that have occurred in its legislative halls, for its great state university, and most important of all, for the Wisconsin idea, has been immortalized by the poet Longfellow and by William Ellery Leonard in his epic "Two Lives."

Centered in southern Wisconsin, Madison is situated in the midst of four lakes which Longfellow described as:

"Four lovely handmaids, that uphold
Their shining mirrors, rimmed with gold,
To the fair city in the West."

A fine view of the city and the lakes may be had from the roof of the capitol. The many fine murals and mosaics and remarkable marbles make a visit to the state capitol highly instructive.

Madison is only 84 miles from Milwaukee and contains much that has to do with the early history of Wisconsin. It was over this ground that Blackhawk, the great Indian chief, led his warriors in 1832 when pursued by United States troops and militia. The homestead of the elder LaFollette is situated on one of the lakes and he is buried near the city.

On Monday, August 27th, the Executive committee and guests will dine at the Milwaukee Club, the city's most exclusive social headquarters. Unlike most American clubs, it follows the English tradition of a closely knit membership and restricted but luxurious quarters. It, too, is noted for the quality of its cuisine. Also on this day will be held many sectional meetings, dinners, and club meetings. Private homes will dispense hospitality to those delegates who are old acquaintances or introduced by old acquaintances.

Milwaukee Day, Tuesday, will be conducted under the leadership of Chauncey Yockey, a past

The Milwaukee Club (Courtesy Milwaukee Sentinel)

master in the arts of entertaining. The memory of man "runneth not to the contrary" since Mr. Yockey has been exalted ruler of the Elks. Possessed of a personality almost Rooseveltian, he has conducted more successful public entertainments than any other man in the city.

There will be a reception and dance for the entire visiting membership on this day; there will be visits to the breweries, these fountains of amber cheer, which will provide, in addition to the beer, delicious kalter-aufschnitt.

That night Pres. Earle W. Evans will preside at the annual reception and ball at the Hotel Schroeder.

The high point of the whole celebration, however, will probably be reached on Wednesday when the Milwaukee Philharmonic Orchestra presents a grand concert on the grounds of the Milwaukee Country Club under the direction of Dr. Frank Laird Waller. Prized possession of a music-loving city, the orchestra will accompany Mrs. Herman Uihlein, as soloist. Mrs. Uihlein, wife of a member of one of Milwaukee's most famous families, is a singer of operatic timber. On that day there will also be sectional dinners and dances and again private dinners. The Country Club entertainment will be presided over by Mrs. Rix.

On Thursday the entertainment will be removed to Pine Lake and Chenequa, heart of the Waukesha Lake Country. The Chenequa golf course, a succession of rolling mounds, is said to be one of the most difficult, but at the same time one of the most popular in Wisconsin. The lake country itself is lush and lovely. Every conceivable outdoor sport is presented here, from flying at the St. John's Military Academy "sea-drome" at Lake Nagawicka, to swimming, yachting, tennis, badminton and golf; even the old fashioned game of pitching horse-shoes, at the adjoining lakes.

Many of these "mirrored waters," including Pine Lake, are noted for their beautiful country places. The Village of Chenequa adjoining Pine Lake, possesses some of the finest formal places in the country.

Following the lake country entertainment there will be a dance at the Wisconsin Club, noted as the rendezvous of fun-loving Americans of German descent. This club has many historic features. It was originally the residence of Alexander Mitchell, "the great-grandfather of Milwaukee" and one-time president of the Milwaukee Road. He was the father of U. S. Sen. John Lendrum Mitchell, for many years Wisconsin's leading representative at Washington, and the grandfather of General William Mitchell of air-force fame, who commanded the allied fliers during the World war.

In addition, this was the favorite haunt of President Theodore Roosevelt during his Milwaukee visits. It is said by the oldsters that he was never happier than when sitting with the rollicking company to be found there, singing the old German songs.

A garden party will be held Friday at the Fox Point Club under the leadership of Mrs. E. B. Shea, wife of Milwaukee's Bar president. This is an old and exclusive golf and swimming club, noted for the austerity of its tempo. That the austerity will be suspended for the occasion can be seen in the fact that the girls of the Junior League will brighten the party with a style show. The garden party and tea will be followed by the annual dinner of the American Bar Association.

Saturday, the closing day, will be marked by yachting at the Milwaukee Yacht Club, gathering place of the bronzed sailors who give such a good account of themselves every year in the Mackinac races. Delegates will board the fleet craft of the harbor that has been compared to the Bay of Naples, and enjoy themselves on the blue waters of Lake Michigan.

Also on Saturday there will take place a pilgrimage to the tercentenary celebration at Green Bay, marking the landing of Jean Nicolet who thought he had found an inland passage to Cathay; landed in Mandarin's robes, firing pistols, to the dismay of the Indians; and remained to found one of the first settlements in the new world.

But again I want to inform the delegates that in addition to all these purely social features they will see at first hand the workings of the most efficient administration of criminal justice in the United States.

Visitors will observe a city and state government free from major corruption, a city that has almost doubled its population during the past 30 years and carried through vast programs of public improvements without any suspicion of graft attaching to them.

Besides the strictly formal program arranged for the delegates, they will be able to avail themselves of all the entertainment features of the city and county parks, of the miles of magnificent beaches and of the municipal golf courses.

Gourmets will want to eat sauerbraten and noodles, and Kalbshaxen at Mader's famous German restaurant; roast duck of a succulence hitherto unexperienced, at Fritz Gust's; Italian food at the Caruso restaurant or at Joseph Gigante's; Jewish food at Harry's Jewish restaurant. They will want to go to the Pfister roof and see "The Drunkard or

the Fallen Saved," a play that evoked tears, back in the days of 1840, and is now good for a thousand hearty laughs. Here members of the audience, as of old, sit around tables where they smoke, eat and drink.

They will want to visit Joe Deutsch's, Heiser's, the Old Heidelberg, Dave Kohler's and Heine Koster's, and they will want to hear Heinie and his Milwaukee Grenadiers, and do a thousand other things that space will not permit of enumeration here.

To those who wish to remain in the state and enjoy an extended vacation after the convention, Wisconsin extends a welcome. They will find her truly "The Bride of Nature."

Following is a list of the committees in charge of the convention:

General Chairman, Franklin Tilden Boesel; Vice-chairmen—T. L. Doyle, Pres. Wis. Bar Ass'n 1934-1935; Carl B. Rix, Pres. Wis. Bar Ass'n 1933-1934; Edmund B. Shea, Pres. Milwaukee Bar Ass'n 1934-1935; Hubert O. Wolfe, Pres. Milwaukee Bar Ass'n 1933-1934. Secretary, Harold Connell; Assistant Secretary, Suel O. Arnold.

Finance Committee — Albert B. Houghton, Chairman; Roger Cunningham, Vice-chairman; Urban Wittig, Secretary; A. S. Puelicher, Treasurer.

Reception Committee—J. Gilbert Hardgrove, Chairman; William A. Hayes, Vice-Chairman.

Courtesies Committee—Claire B. Bird, Honorary Chairman; Louis Lecher, Chairman; J. V. Quarles, Vice-chairman.

Entertainment Committee — William J. Zimmers, Chairman; George E. Ballhorn, Vice-chairman; Jackson Bruce, Secretary.

Transportation Committee—Gerald P. Hayes, Chairman; E. H. Borgelt, Vice-chairman; Wilke Zimmers, Secretary.

Judiciary Committee—Chief Justice Marvin B. Rosenberry, Chairman; Hon. A. C. Backus, Vice-chairman; Arthur A. McLeod, Secretary.

Publicity Committee—James Maxwell Murphy, Chairman; Paul Allen Holmes, Managing Editor Milwaukee Sentinel; Douglas Worthington Swiggett, Milwaukee Journal; Edward Mahoney, Managing Editor, Wisconsin News; John Marvin OBrien II; David W. Bloodgood; Miss Virginia North; Urbin R. Wittig, J. F. Woodmansee, Editor, Daily Reporter.

Women Lawyers—Margaret Jorgensen, Chairman Committee of Women; Executive Committee —Mrs. Edmund B. Shea, Chairman; Mrs. Franklin T. Boesel; Mrs. Albert B. Houghton; Mrs. Louis Lecher; Mrs. Carl B. Rix; Miss Cecilia Doyle; Mrs. J. V. Quarles.

Reception Committee, Mrs. Lawrence Olwell, Chairman.

Entertainment Committee, Mrs. Ralph Hoyt, Chairman.

PROGRAM OF FIFTY-SEVENTH ANNUAL MEETING

Tuesday Afternoon, August 28, 1:30 o'clock

Milwaukee Auditorium

Address of Welcome.

Response.

Annual Address by the President of the Association.

Announcements.

Report of the Secretary.

Report of the Treasurer.

Report of the Executive Committee.

Statement concerning the work of the American Law Institute, William Draper Lewis, Director.

Report of the National Conference of Commissioners on Uniform State Laws, Orie L. Phillips, President.

(State Delegations will meet at the close of the session to nominate members to fill vacancies on General Council and to elect State Councils for each state.)

Tuesday Evening, August 28, 8:30 o'clock

Milwaukee Auditorium

Address by The Rt. Honourable Lord Tomlin, Lord of Appeal in Ordinary, "Case Law."

Election of members of General Council to fill vacancies.

10:00 o'clock

Ball Room, Schroeder Hotel

Reception by the President of the Association. Dancing.

Wednesday Morning, August 29, 10:00 o'clock

Milwaukee Auditorium

Report of Conference of Bar Association Delegates, Robert H. Jackson, Jamestown, N. Y.

REPORTS OF COMMITTEES

American Citizenship, James M. Beck, Philadelphia, Penn.

Jurisprudence and Law Reform, Edward W. Everett, Chicago, Ill.

Federal Taxation, George Maurice Morris, Washington, D. C.

Commercial Law and Bankruptcy, Jacob M. Lashly, St. Louis, Mo.

Admiralty and Maritime Law, Lawrence Bogle, Seattle, Wash.

Commerce, Rush C. Butler, Chicago, Ill.

Practice of Law in District of Columbia, Frank S. Bright, Washington, D. C.

Judicial Salaries, Alexander B. Andrews, Raleigh, N. C.

Administrative Law, Louis G. Caldwell, Washington, D. C.

Noteworthy Changes in Statute Law, Joseph P. Chamberlain, New York, N. Y.

Legal Aid Work, Reginald Heber Smith, Boston, Mass.

Facilities of the Law Library of Congress, James Oliver Murdock, Washington, D. C.

Wednesday Afternoon, August 29, 2:00 o'clock

Milwaukee Auditorium

NATIONAL BAR PROGRAM

Subject: "Criminal Law and Its Enforcement."

Report on the work of the Section of Criminal Law and the result of the questionnaire, by Justin Miller, Durham, N. C., Chairman of the Section of Criminal Law.

Report of Committee on Code of Criminal Procedure, Floyd E. Thompson, Chicago, Illinois.

Address by Joseph B. Keenan, Assistant Attorney General of the United States.

Address by Charles H. Tuttle, former United States District Attorney, New York, N. Y.

"A Program for Dealing with the Criminal Law Problem" will be presented by William L. Ransom, member of the Executive Committee of the American Bar Association.

Discussion led by George A. Bowman, Milwaukee, Wisc.; Guy R. Crump, Los Angeles, Calif.; John P. Devaney, Chief Justice of the Supreme Court of Minnesota; Floyd E. Thompson, Chicago, Illinois.

General Discussion.

Thursday Afternoon, August 30, 2:00 o'clock

Milwaukee Auditorium

NATIONAL BAR PROGRAM

Subject: "The Effect of the Unauthorized Practice of Law on the Administration of Justice."

Report on the work of the Standing Committee on Unauthorized Practice of the Law and result of questionnaire, by John G. Jackson, New York, N. Y., Chairman of the Committee.

Address by Silas H. Strawn, Chicago, Illinois.

Discussion led by Charles A. Beardsley, Oakland, Calif.; George E. Brand, Detroit, Michigan; Edmund B. Shea, Milwaukee, Wis.; and Sol Weiss, New Orleans, La.

General Discussion.

Thursday Evening, August 30, 8:30 o'clock

Milwaukee Auditorium

Address by Carl McFarland, Helena, Montana, "Administrative Agencies in Government and Effect Thereon of Constitutional Limitations."

(Prize-winning essay in the contest conducted by the Association under the terms of the Erskine M. Ross Bequest.)

Address by Nathan L. Miller, New York, N. Y., former Governor of New York, "The Constitution and Modern Trends."

Friday Morning, August 31, 10:00 o'clock

Milwaukee Auditorium

REPORTS OF SECTIONS

International and Comparative Law, John H. Wigmore, Chicago, Ill.

Insurance Law, Arthur T. Vanderbilt, Newark, N. J.

Legal Education and Admissions to the Bar, John Kirkland Clark, New York, N. Y.

Mineral Law, James W. Finley, Bartlesville, Okla.

Patent, Trademark and Copyright Law, Jo Baily Brown, Pittsburgh, Pa.

Public Utility Law, Henry G. Wells, Boston, Mass.

REPORTS OF COMMITTEES

Amendments to Federal Securities Act of 1933.

International Bar Relations, John H. Wigmore, Chicago, Ill.

Communications, John W. Guider, Washington, D. C.

Aeronautical Law, John C. Cooper, Jr., Jacksonville, Fla.

Friday Afternoon, August 31, 2:00 o'clock

Milwaukee Auditorium

NATIONAL BAR PROGRAM

Subject: "Appointment versus Election of Judges."

Report by Austin V. Cannon, Cleveland, Ohio, Chairman of Committee on Judicial Selection of the Conference of Bar Association Delegates, on the result of the questionnaires on Judicial Selection.

Addresses by Paul V. McNutt, Governor of Indiana; Joseph F. O'Connell, Boston, Mass.

Discussion led by Hubert C. Wyckoff, Watsonville, Calif., and Arthur E. Sutherland, Rochester, N. Y.

General Discussion.

Report of Judicial Section, Edward R Finch, New York, N. Y.

Reports of Committees.

Federal Judicial Appointments, John W. Davis, New York, N. Y.

Coordination of the Bar, Jefferson P. Chandler, Los Angeles, Calif.

Municipal Law, Charles W. Tooke, New York, N. Y.

Canons of Ethics, Charles A. Boston, New York, N. Y.

Professional Ethics and Grievances, Arthur E. Sutherland, Rochester, N. Y.

Award of American Bar Association Medal.

Report of Chairman of General Council.

Election of officers and members of Executive Committee.

Miscellaneous unfinished business.

Friday Evening, August 31, 7:00 o'clock

(Ball Room, Schroeder Hotel)

Annual Dinner of members, ladies and guests.

Tentative Programs of Committees, Sections and Other Organizations

Standing Committee on Communications
Monday Afternoon, August 27, at 2 o'clock

John W. Guider, Chairman, Presiding

The Committee on Communications will hold an open meeting, at which all members of the Association who are interested are invited to be present, for discussion of the report of the Committee, the Communications Act of 1934, recently enacted, and for the formulation of a program of work for the Committee during the coming year.

Special Committee on Federal Taxation
Tuesday Morning, August 28, at 10 o'clock

George Maurice Morris, Chairman, Presiding

Speakers:

Roswell Magill, recent Special Legislative Representative of the Treasury Department,—"Trends: With Particular Attention to the Revenue Act of 1934."

Robert H. Jackson, General Counsel for the Bureau of Internal Revenue,—"Policies of the Bureau of Internal Revenue."

Robert N. Miller, Washington, D. C.,—"Corporate Reorganizations: Where Are We Now?"

General Discussion.

Members in attendance will be requested to submit suggestions for the guidance of the Committee.

Special Committee on Municipal Law
Monday Afternoon, August 27, at 2 o'clock

Charles W. Tooke, Chairman, Presiding

"Legal Problems Affecting the Non-Federal Phases of the Public Works Program."—Paper by

Hon. Frederick Wiener of the Federal Emergency Administration, Washington, D. C.

Discussion to be led by Benjamin F. Langworthy, Chicago, Ill.

"State Receiverships of Municipal Corporations."—Paper by Hon. Henry F. Long, State Commissioner of Corporations and Taxation, Boston, Mass.

Discussion to be led by David M. Wood, New York, N. Y., Joseph E. Warner, Attorney General of Massachusetts, Boston, and Cornelius Lynde, of Chicago, Ill.

"Immunity of Municipal Corporation from Tort Liability."—Paper by Dr. Edwin M. Borchard, Yale University.

Discussion to be led by Ambrose Fuller, Minneapolis, Minn.

Conference of Bar Association Delegates

Monday Morning, August 27, at 10 o'clock

Address by Chairman Robert H. Jackson, Jamestown, N. Y.

Reports of Committees:

Bar Reorganization, Philip J. Wickser, Buffalo, N. Y.

Cooperation Between Press and Bar, Andrew R. Sherriff, Chicago, Ill.

Judicial Selection, A. V. Cannon, Cleveland, Ohio.

Rule-Making Power of the Courts, Frank W. Grinnell, Boston, Mass.

State Bar Integration, Carl V. Essery, Detroit, Mich.

State and Local Bar Activities, Morris B. Mitchell, Minneapolis, Minn.

Accident Litigation, Henry S. Drinker, Jr., Philadelphia, Pa.

Reports will be presented on this subject by Mr. Howard D. Bailey, of Syracuse, N. Y., and Mr. Clarence J. Hartley, of Duluth, Minn., members of the Committee, in opposition to the views expressed in the report presented by Mr. Drinker.

Mr. Arthur A. Ballantine, of New York, N. Y., will speak in support of Mr. Drinker's report.

Mr. Arthur T. Vanderbilt, Newark, N. J., and Mr. Crandall Melvin, Syracuse, N. Y., will speak in opposition to Mr. Drinker's report.

A number of other speakers will discuss this important subject.

Appointment of Nominating Committee.

Monday Afternoon, at 2 o'clock

General Discussion of Reports on Accident Litigation.

Report of Nominating Committee.

Election of Officers of Conference of Bar Association Delegates.

Unfinished Business.

Monday Evening, at 7 o'clock

Schroeder Hotel

Annual Dinner of Delegates, Ladies and Guests, in cooperation with American Judicature Society.

Thursday Morning at 10 o'clock

Joint Meeting of Section of Legal Education and Admissions to the Bar and Conference of Bar Association Delegates

Address by John Kirkland Clark, Chairman of Section of Legal Education and Admissions to the Bar, —"Qualifications for Bar Admission; a Sketch of Progress in Raising Standards."

Appointment of Nominating Committee.

Addresses by:

Hon. Orie L. Phillips, Judge of the United States Circuit Court of Appeals for the Tenth Circuit,—"Building a Better Bar."

Dean Henry M. Bates, University of Michigan Law School, — "Improving Qualifications for a Lawyer's License Through National Cooperation."

Dr. Walter L. Bierring, President of American Medical Association—"The Standards of Medical Education and Qualifications for Licensure."

General Discussion.

The Milwaukee Country Club. (Courtesy Milwaukee Sentinel.)

Report of Nominating Committee.

Election of Officers of Section of Legal Education and Admissions to the Bar.

Section of Criminal Law

Monday Afternoon, August 27, at 2:30 o'clock

Justin Miller, Chairman, Presiding

Report of Chairman.

Report of Secretary.

Reports of Committees on:

Cooperation with American Law Institute, Howard B. Warren, Shreveport, La.

Cooperation with American Legislators' Association, Willis Smith, Raleigh, N. C.

Cooperation with American Prison Association, Sanford Bates, Washington, D. C.

Cooperation with International Association of Chiefs of Police, Arthur J. Freund, St. Louis, Mo.

Criminal Procedure, James J. Robinson, Bloomington, Ind.

Medico-Legal Problems, Albert J. Harno, Urbana, Ill.

Personnel in Law Enforcement, John Barker Waite, Ann Arbor, Mich.

Psychiatric Jurisprudence, Rollin M. Perkins, Iowa City, Ia.

Address by Thomas W. S. Parsons, Assistant Commissioner, British Columbia Police, Victoria, B. C.—"The Problem of the Rural Police."

Appointment of Nominating Committee.

Wednesday Evening, at 7 o'clock

Dinner for Members, Ladies and Guests.

Subject for Discussion—"The Disposition and Treatment of the Offender After Conviction," led by Sanford Bates, Director, Federal Bureau of Prisons.

Speakers:

James A. Johnston, Warden Federal Penitentiary, San Francisco, California, "Prison Escapes."

Lewis E. Laws, Warden, Sing Sing Prison, Ossining, N. Y., "Prison Administration."

Thursday Morning, at 10 o'clock

Addresses by:

O. W. Wilson, Chief of Police, Wichita, Kansas, Chairman of the Committee of the International Association of Chiefs of Police on Cooperation with American Bar Association,—"Community Organization for the Prevention of Crime."

J. Edgar Hoover, Chief, Bureau of Investigation, United States Department of Justice,—"Detection and Apprehension."

Joseph B. Keenan, Assistant Attorney General of the United States,—"Federal and State Cooperation."

Report of Nominating Committee.

Election of Officers.

Unfinished Miscellaneous Business.

Thursday Afternoon, 12:30 o'clock

Luncheon Meeting of Council.

Section of Insurance Law

Monday Morning, August 27, at 10 o'clock

Arthur T. Vanderbilt, Chairman, Presiding

Address of Welcome by H. J. Mortensen, Insurance Commissioner of the State of Wisconsin.

Response by Chairman of Insurance Law Section.

Report of Secretary.

Report of Committee on Health and Accident Insurance Law, Frank E. Spain, Chm.

Address by Remington Rogers, Tulsa, Okla.,—"Bogus Claimants and Malingerers."

Report of Committee on Automobile Insurance Law, Howard D. Brown, Chm.

Address by Hon. Walter S. Pope, Casualty Insurance Commissioner of Texas,—"Proposed Uniform Automobile Policy."

Report of Committee on Casualty Insurance Law, Jesse A. Miller, Chm.

Address by Frederick S. Kellogg, Jersey City, N. J.,—"Silicosis Claims a New Problem in the Insurance Field."

Report of Special Committee on Amendments to Proposed Insurance Code, Walter L. Clark, Chm.

Address by J. Gordon Bohannan, Petersburg, Va.—"Taxation of Premium Incomes of Fire Insurance Companies for the Purpose of Creating Funds for the Relief of Injured or Disabled Members of Fire Departments and for the Relief of Dependents of Deceased Firemen."

Appointment of Nominating Committee.

Monday Afternoon, at 2 o'clock

Report of Committee on Fidelity and Surety Insurance Law, John A. Luhn, Chm.

Address by Hon. Clarence W. Hobbs, Former Insurance Commissioner of Massachusetts and Special Representative of the National Convention of Insurance Commissioners on the National Council of Workmens' Compensation Insurance,—"Qualifying Bonds or Deposits in Workmens' Compensation or Other Types of Insurance."

Report of Committee on Fire Insurance Law, Lionel P. Kristeller, Chm.

Address by Lionel P. Kristeller, Newark, N. J.,—"An Analysis of the Appraisal Clause of the Standard Fire Insurance Policy."

Report of Committee on Life Insurance Law, Thomas B. Gay, Chm.

Address by John Ferris Handy, Associate Counsel, Massachusetts Mutual Life Insurance Company, "Anticipatory Breach of Contract in so far as It Affects Life Insurance."

Report of Committee on Marine Insurance Law, George S. Brengle, Chm.

Election of Officers.

Monday Evening, at 7 o'clock

First Annual Dinner for Members, Ladies and Guests.

Adresses by: Wesley E. Monk, General Counsel, Massachusetts Mutual Life Insurance Company, "Insurance in the Depression and Beyond"; L. Barrett Jones, Jackson, Miss., "Yarns"; Hon. Felix Hebert, United States Senator from Rhode Island.

Thursday Morning, August 30, at 10 o'clock

Report of Committee on Qualification and Regulation of Insurance Companies, Howard C. Spencer, Chairman.

Address by Howard C. Spencer, Counsel to the Title and Mortgage Rehabilitation Bureau of the New York State Insurance Department,—"Some Legal Aspects of the Guaranteed Mortgage Company Rehabilitation Program."

Report of Committee on Unemployment Insurance Law, Charles Denby, Jr., Chm.

Report of Committee on Workmens' Compensation and Employers' Liability Insurance Law, John W. Cronin, Chm.

Address by John Henry D. Sayer, Former Industrial Accident Commissioner of New York,—"The Realities of Workmens' Compensation—A Contrast Between Theory and Practice."

Report of Committee on Automobile Guest Legislation, Harry E. Rodgers, Chm.

Report of Committee on Federal Interpleader Legislation, Arthur Gray Powell, Chm.

Address by Zechariah Chafee, Jr., Professor of Law, Harvard University,—"Extension of Federal Interpleader to all Business."

Report of Nominating Committee.

Election of Officers.

Section of International and Comparative Law

Monday Afternoon, August 27, at 2:30 o'clock

Business Meeting of Council and Section.

Tuesday Morning, August 28, at 10 o'clock

INTERNATIONAL LAW:

Report of Committee on Essential Features of Commercial Treaty with Russia, Franklin Russell, New York City, Chairman.

Report of Committee on Cooperation with American Society of International Law, American Law Institute, American Branch of International Law Association, and American Foreign Law Association, James O. Murdock, Washington, D. C., Chairman.

Discussion to be led by James Grafton Rogers, Boulder, Colo. and James W. Garner, Urbana, Ill.

Address by Bainbridge Colby, former Secretary of State—"The Johnson Act and International Debts."

Appointment of Nominating Committee.

Wednesday Evening, August 29, at 7 o'clock

Dinner for Members, Ladies and Guests.

Addresses by: Prof. Salvatore Galgano, Director of the National Institute of Comparative Law, Rome, Italy; Charles A. Beardsley, former President State Bar of California, Oakland, Calif.; William C. Dennis, President of Earlham College, Richmond, Indiana; Hon. Lewis Bernays, Consul General of the British Empire in Chicago.

Thursday Morning, August 30, at 10 o'clock

COMPARATIVE LAW:

Report of Committee on Powers of Attorney in Latin-American Countries, David Grant, New York City, Chairman.

Address by James R. Knapp, New York City, "Conflict of Fiscal Law, Effect on International Business."

Address by Mitchell B. Carroll, New York City, "Methods of Avoiding International Double Taxation."

Address by Richard W. Flournoy, Jr., Washington, D. C., "Proposed Codification of our Chaotic Nationality Laws."

Report of Nominating Committee.

Election of Officers.

Miscellaneous Unfinished Business.

Judicial Section

Tuesday Morning, August 28, at 10 o'clock

Hon. Edward R. Finch, Chairman, Presiding

Address of Welcome by Hon. Marvin B. Rosenberry, Chief Justice, Supreme Court of Wisconsin.

Response to Address of Welcome.

Appointment of Nominating Committee.

"An Appraisal of the Work of the American Law Institute as Submitted to the Public."

Charles E. Clark, Dean of the School of Law of Yale University, William Draper Lewis, Director of the American Law Institute, and others who have given study to the work of the American Law Institute, will take part.

Report of Nominating Committee.

Election of Officers.

Wednesday Evening, August 29, at 7 o'clock

Joint Dinner of the Judicial Section and the National Conference of Judicial Councils

Edward R. Finch, Presiding Justice, Appellate Division of the Supreme Court of New York, and Chairman of the Judicial Section, will preside.

The Rt. Hon. Lord Tomlin, Lord of Appeal in Ordinary, will attend the dinner.

Addresses by: Hon. Frederick E. Crane, Associate Judge, Court of Appeals, New York; Roscoe Pound, Dean, School of Law, Harvard University; Harvey T. Harrison, Little Rock, Arkansas.

Thursday Morning, August 30, at 10 o'clock

Joint Meeting of Judicial Section and National Conference of Judicial Councils

Arthur T. Vanderbilt, Chairman of the National Conference of Judicial Councils, Presiding.

General Topic: "How Shall Procedure Be Prescribed?"

(a) "By Laws Enacted by the Legislature," Hon. Fred M. Wylie, Former Deputy Attorney General of Wisconsin.

(b) "By Rules Promulgated by the Court," Hon. Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

(c) "By Rules Originating in the Judicial Council," Hon. Edson R. Sunderland, Professor at Law of the University of Michigan, and Secretary of the Judicial Council of the State of Michigan.

General Discussion.

Section of Mineral Law

Monday Afternoon, August 27, at 2 o'clock

James W. Finley, Chairman, Presiding

Reading of Minutes.

Disposition of Routine Matters.

Appointment of Nominating Committee.

Address by Hon. Elmer Thomas, United States Senator from Oklahoma,—"The New Dollar."

Tuesday Morning, at 10 o'clock

Address by Francis L. Dailey, Chicago, Ill.,—"Valuation of Natural Gas Leases for Rate Making."

Report of Committee on Conservation of Mineral Resources.

Reports of State Committees on Conservation.

Unfinished Business.

Report of Nominating Committee.

National Conference of Commissioners on Uniform State Laws—Forty-fourth Annual Meeting

Schroeder Hotel

Tuesday, August 21, to Monday, August 27, inclusive, 1934

Tuesday, August 21, 9:30 A. M.

Section and Committee Meetings.

2:00 P. M.

First Session of Conference:

1. Address of Welcome.
2. Response Thereto.

3. Roll Call.
4. Reading of Minutes of Last Meeting.
5. Announcement of Appointment of Nominating Committee.
6. Address of the President.
7. Report of the Treasurer.
8. Report of the Secretary.
9. Report of the Executive Committee.

Reports of Standing Committees.
Reports of General Committees.
Reports of Sections.
Reports of Other Committees.

8:00 P. M.

Deferred Section and Committee Reports.
Consideration of First Tentative Draft of Uniform Criminal Statistics Act.

Wednesday, August 22, 9:30 A. M.

Consideration of Final Draft of Uniform Foreign Corporation Act (with a view to adoption of the Act already tentatively adopted.)

2:00 P. M.

Consideration of Final Draft of Uniform Foreign Corporation Act (with a view to adoption of the Act already tentatively adopted.)
Consideration of Fifth Tentative Draft of Uniform Bank Collection Act.

7:30 P. M.

Annual Dinner and Dance, Milwaukee Country Club.

Thursday, August 23, 9:30 A. M.

Consideration of Fifth Tentative Draft of Uniform Bank Collection Act.

2:00 P. M.

Consideration of Fifth Tentative Draft of Uniform Bank Collection Act.
Consideration of First Tentative Draft of Proposed Amendments to Uniform Negotiable Instruments Act Covering Investment Securities.

8:00 P. M.

Consideration of First Tentative Draft of Proposed Amendments to Uniform Negotiable Instruments Act Covering Investment Securities.
Consideration of First Tentative Draft of Uniform Vendor and Purchaser Act.

Friday, August 24, 9:30 A. M.

Consideration of Second Tentative Draft of Uniform Aeronautical Regulatory Act.
Consideration of First Tentative Draft of Uniform Airports Act.

2:00 P. M.

Consideration of First Tentative Draft of Uniform Airports Act.
Consideration of First Tentative Draft of Uniform Business Records as Evidence Act.
Consideration of First Tentative Draft of Uniform Composite Reports as Evidence Act.
Consideration of First Tentative Draft of Uniform Judicial Notice of Foreign Laws Act.
Consideration of First Tentative Draft of Uniform Official Reports as Evidence Act.

4:30 P. M.

Reports of Committees on Memorials.

8:00 P. M.

Consideration of First Tentative Draft of Uniform Trusts Act.

Saturday, August 25, 9:30 A. M.

Consideration of First Tentative Draft of Uniform Trusts Act.
Consideration of Third Tentative Draft of Uniform Trustees' Accounting Act.
Consideration of Fourth Tentative Draft of Uniform Estates Act.

2:00 P. M.

Consideration of Fourth Tentative Draft of Uniform Estates Act.

Monday, August 27, 9:30 A. M.

Consideration of Fifth Tentative Draft of Uniform Acknowledgment of Instruments Act.
Consideration of Second Tentative Draft of Uniform Civil Depositions Act.
Consideration of First Tentative Draft of Uniform Letters of Credit Act.
Consideration of First Tentative Drafts of Other Proposed New Uniform Acts.
Unfinished Business.
New Business.
Adjournment.

Section of Patent, Trade Mark and Copyright Law

Monday and Tuesday, August 27 and 28

Jo Baily Brown, Chairman, Presiding

Sessions will be held at 10 A. M. and 2 P. M. on Monday and at 10 A. M. on Tuesday.

Reports of Section Committees and new matters that may be brought up will be presented and considered.

Wednesday, August 29, at 7 o'clock

Annual dinner for Members, Ladies and Guests.

Section of Public Utility Law

Monday, August 27, 10:00 A. M.

Address of Welcome, Andrew R. McDonald, Commissioner, Public Service Commission of Wisconsin and Vice-President of National Association of Railroad and Utilities Commissioners.
Address by Henry G. Wells, Chairman of Section.
Appointment of Nominating Committee.
Report of Standing Committee to Survey and Report as to Developments During the Year in the Field of Public Utility Law,—Richard J. Smith, Chairman, New York City.
Address by Richard T. Higgins, Chairman, Connecticut Public Utilities Commission and President of the National Association of Railroad and Utilities Commissioners.
Discussion.

2:15 P. M.

Report of Committee on State and Federal Functions in the Regulation of Electric Utilities,—Lowell M. Greenlaw, Chairman, Chicago, Ill.
Address by Elmer A. Smith, Chicago,—"Emergency Rate Orders and the Due Process Clause."
Discussion.

Tuesday, August 28, 10:00 A. M.

Report of Committee on the Legal Aspects of Modern Regulatory Problems of Transportation,—C. M. Updegraff, Chairman, University of Iowa.
Address, Karl Knox Gartner, Washington, D. C., "Government Planning for Interstate Transportation."

Discussion.
Report of Nominating Committee.
Election of Officers.
Unfinished Business.
Adjournment.

Wednesday Evening, August 29, at 7:30 o'clock

Annual Dinner of Members, Ladies and Guests. Dancing.

Proposed Section of Real Property Law

Organization Meeting

Tuesday Morning, August 28, at 10 o'clock

1. Call to order and statement of province of Section and outline of probable activities—R. G. Patton, Chairman of Committee on Organization.
2. Selection of Temporary Chairman and Secretary, and announcement of Committees on By-Laws and on Nominations.
3. Conflict of Interest between Air-Rights and Ground-Rights, Nathan William MacChesney, of the Chicago Bar.
4. The Unfortunate Status of Certain Features of Real Property Law, and Suggested Remedies—Everett Fraser, Dean of the College of Law, University of Minnesota.
5. Revenue or Enforcement Interests; Suggested Remedies,—Charles C. White, Cleveland, Ohio.

Luncheon Meeting, at 12:30 o'clock

Report of Committee on By-Laws by Mr. Henry Upson Sims.

Announcement of Clinic for Examiners of Home Owners and Land Bank Loans.

Thursday Morning, August 30, at 10 o'clock

1. The Evolution now taking Place in the Principles of Real Property Law—Charles E. Clark, Dean of Yale Law School; Lewis M. Simes, Adviser for Restatement of Property, American Law Institute.
2. Report of Work being done by other Real Property Groups—Walter J. Trogner, Minneapolis, Minn.
3. Round Table Discussion.
4. Report of Nominating Committee.
5. Election of Officers and Council.
6. Adjournment.

Association of Bar Journal Editors

Luncheon Meeting

Wednesday, August 29, at 12:30 P. M.

Frank P. Barker, Chairman, Presiding

Conference on Personal Finance Law

Annual Luncheon Meeting

Tuesday, August 28, 1934, at 12:30 P. M.

Edmund Ruffin Beckwith, New York, Chairman

International Association for the Protection of Industrial Property

(American Group)

Annual Luncheon Meeting

Wednesday, August 29, at 12:30 P. M.

Committee Reports and Recommendations.

United States Delegates, now in England attending the London Conference, will render reports at this meeting. Such reports should be of great interest, many of the recommendations of the group having been presented on behalf of the United States and some appearing to have been adopted.

Election of Officers.

Members of the American Bar Association who may be interested are cordially invited to attend the luncheon and meeting, reservations for which may be made at the General Headquarters Hotel.

Junior Bar Conference

Delegates are requested to register at the General Headquarters of the American Bar Association, Pere Marquette Room, Fifth Floor, Schroeder Hotel, immediately upon arrival.

Monday, August 27, 2:00 P. M.

Organization Session.

Samuel S. Willis, Detroit, Michigan, Secretary of Organization Committee, Presiding.

Address of Welcome by Kneeland Godfrey, President Blackstone Club, Milwaukee.

Response by Edward Gluck, New York, N. Y., Member of Organization Committee.

Selection of Temporary Chairman and Secretary, and appointment of Committees on By-Laws and on Nominations.

Address by Walter P. Armstrong, Memphis, Tenn., Member of Executive Committee of American Bar Association.

Fifteen minute addresses by:

Lowell White, President Law Club of Denver; Joseph Stecher, Member Junior Bar Committee of Toledo.

Discussion from the floor.

7:00 P. M.

Informal Dinner for Delegates.

Tuesday, August 28, 10:00 A. M.

Report of Committee on By-Laws.

Address by Henry Bane, President, Junior Bar Association of Durham, N. C.

Address by Philip J. Wickser, Buffalo, N. Y., Member and Secretary of Committee on Coordination of the Bar of the American Bar Association, "The Junior Bar and the National Bar Program."

Discussion from the floor.

Wednesday, August 29, 7:00 P. M.

Dinner for Delegates, Ladies and Guests. Dancing.

Thursday, August 30, 10:00 A. M.

Address by Edward J. Fleming, Chairman Junior Activities, Chicago Bar Association.

Address by Carl V. Essery, former President Michigan State Bar Association, "The Junior Bar and Integration."

Discussion from the floor.

Report of Nominating Committee.

Adjournment.

The National Conference of Bar Examiners

General Session, Tuesday Morning, August 28, 10 o'clock

Address by the Chairman, Charles P. Megan, of Illinois.

"Development of an Adequate Bar Admission Agency," Dean Leon Green, Northwestern University Law School, Chicago, Ill.

"Character Examination for Admission to the Bar," Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

Mr. Alexander Armstrong, Chairman of the

Maryland State Board of Law Examiners, will speak on a subject to be announced later.

Round Table Meeting, Wednesday Evening, August 29, 8:30 o'clock

The round tables will discuss two different subjects, one hour being given to each and the second round table following the first so that the entire attendance may have an opportunity to be present at both discussions. The first subject will deal with character examination and will be divided into two parts, the examination of the character of foreign attorneys by The National Conference of Bar Examiners and methods of investigating the character and fitness of candidates for admission. The second round table will deal with the technique of bar examinations and treat (1) preparation of questions, (2) marking of papers, (3) oral examinations.

Meetings of Law School Alumni Associations and Legal Fraternities

The following Law School Alumni Associations will hold luncheons at the Schroeder Hotel, Milwaukee, during the Annual Meeting of the American Bar Association:

Wednesday, August 29, 12:30 P. M.

Georgetown University Law School Alumni, Parlor C, 4th Floor.

George Washington University Law School Alumni, Parlor I, 4th Floor.

University of Illinois Law School Alumni, Parlor E, 4th Floor.

Texas Delegation, Parlor A, 4th Floor.

University of Wisconsin Law School Alumni, Ball Room, 5th Floor.

Yale University Law School Alumni, Parlor B, 4th Floor.

Thursday, August 30

8:00 A. M.

Phi Delta Delta (Breakfast) Parlor A, 4th Floor.

12:30 P. M.

University of Chicago Law School Alumni, Parlor E, 4th Floor.

Columbia University Law School Alumni, Parlor C, 4th Floor.

Cornell University Law School Alumni, Parlor H, 4th Floor.

Harvard University Law School Alumni, Banquet Room, 5th Floor.

University of Iowa Law School Alumni, Parlor A, 4th Floor.

University of Virginia Law School Alumni, Parlor I, 4th Floor.

University of Michigan Law School Alumni, Club Room, 3rd Floor.

6:30 P. M.

Phi Delta Phi (Dinner) English Room, 5th Floor.

Friday, August 31, 12:30 P. M.

Northwestern University Law School Alumni, Parlor C, 4th Floor.

Vanderbilt University Law School Alumni, Parlor I, 4th Floor.

The Phi Alpha Delta Legal Fraternity will maintain headquarters for the convenience of its members, and will arrange for the entertainment of ladies accompanying them. For further information address Waldemar E. Wehe, 606 West Wisconsin Avenue, Milwaukee, Wis., Chairman of Committee on Arrangements.

Twenty-Eighth Annual Meeting of the National Association of Attorneys-General

Monday, August 27, 11:00 A. M.

Hon. William A. Schnader, Attorney-General of Pennsylvania, President, presiding.

Address of Welcome: Hon. James E. Finnegan, Attorney-General of Wisconsin.

Responses:

Hon. Edward L. O'Conner, Attorney-General of Iowa.

Hon. Hal L. Norwood, Attorney-General of Arkansas.

Report of Secretary and Treasurer: Hon. J. E. Messerschmidt of Wisconsin.

President's Address: "Federal Encroachments on State Sovereignty."

Address by Hon. Patrick H. O'Brien, Attorney-General of Michigan, "The Industrial Codes and Labor."

Afternoon Session, 2:30 P. M.

Addresses:

"Significance of the Supreme Court's Decision in the New York Milk Control Case." Hon. Henry Epstein, Solicitor General of New York.

"To What Extent Should State Attorneys-General Be Charged with Administrative Duties," Hon. Raymond T. Nagle, Attorney-General of Montana.

"Office Correspondence," Hon. John W. Bricker, Attorney-General of Ohio.

"Taxing Gross Incomes," Hon. Walter Conway, Attorney-General of South Dakota.

General Discussion of Addresses.

Appointment of Committee on Nominations.

Tuesday, August 28, 11:00 A. M.

Addresses:

"Federal Processing Taxes as Applied to State Activities," Hon. M. J. Yoomans, Attorney-General of Georgia.

"The Practical Operation of the New Indiana System of Taxation," Hon. Phillip Lutz, Jr., Attorney-General of Indiana.

"The Minnesota Mortgage Moratorium Law," Hon. Harry H. Peterson, Attorney-General of Minnesota.

General Discussion of Addresses.

Committee Reports.

Election of Officers.

Adjournment.

Arrangements for Annual Meeting

HEADQUARTERS: Schroeder Hotel.

Hotel accommodations, all with bath, are available as follows:

	Single for one person	Double (Dble. bed for two persons)	Twin Beds for two persons	Parlor Suites
The New Pfister	$4 to $6	$5 to $8	$6 to $10	$12 up
Hotel Plankinton	$3 to $4	$4 to $5	$5 to $10	$10 up
Hotel Wisconsin	$3 to $3.50	$5 to $5.50	$6 to $ 7	$12 up
Republican Hotel	$2 up			
Hotel Medford	$2.50 to $3	$3.50 to $4.50	$5 to $ 5.50	
New Randolph	$2.50 to $5	$4 to $8		

Hotel Astor (Apartment Hotel) Kitchenette apartments from $5.00 up. Rooms without bath are available in all hotels at lower rates.

(Continued on page 511)

CHESTER I. LONG: A TRIBUTE AND AN APPRECIATION

By F. Dumont Smith

Member of the Hutchinson, Kansas, Bar; Chairman Emeritus of Association's Committee on American Citizenship

My friends: "A great man is dead in Israel this day"; how great only time can weigh and measure; only the future can evaluate the work that he did, the tasks that he performed in his long life. I shall not review this work, it is known to all of you. I prefer to refute some of the popular errors as to the character of my dead friend. It was commonly said of him that he was cold-hearted. He was by nature reserved and reticent of all emotion, not wearing his heart on his sleeve, making friends slowly and holding them to the end. A warmer, more devoted friend I have never known — a thoughtful friend, seeking always some opportunity to do something for those he loved.

HON. CHESTER I. LONG

I had known the Senator for thirty years but my friendship for him ripened into deep affection after we were appointed on the Commission to revise the Kansas Statutes in 1921, after we had engaged in important litigation together and worked together in the American Bar Association. No one who knew Senator Long intimately, as I did, would call him cold-hearted.

His opponents called him a bigoted, prejudiced Standpatter. I have never known a man freer from prejudice than Senator Long. Prejudice is pre-judgment and he never prejudged a man or public question. What they called prejudices were deep-seated opinions, based on a profound study of our Government, its Constitution, and its Parliamentary History—opinions that amounted to convictions, and Senator Long never wavered in his convictions. He cherished the old idea that those whom the people chose for their political leaders, as Senators, Representatives and Executive should be Leaders, and not followers. So he considered the great questions that came up, the Gold Standard, the Philippines, the Tariff, and so on, on their merits, and not from the election returns. His public addresses were prepared with great care, were illuminating and educational rather than partisan appeals for votes. In my long acquaintance with him I never heard him speak a derogatory word of his political opponents, even that faction of the party which defeated him in 1908 by misrepresentation.

He was lucky to escape from the Senate when he did. The type of political Leader, of which he was a conspicuous example, was passing. Today the type is practically obsolete. If Senator Long were in the Senate today he would be as much out of place as Thomas Jefferson. He was fortunate in retiring at the prime of life, forty-nine years of age, when he could build up a law practice, which he speedily did. His success at the Bar was amazing. When he opened his law office in Wichita, in 1909, challenging one of the strongest Bars of the southwest, he was almost ignorant of the law, and unfamiliar with its practice, but in a few years he had built up one of the strongest legal organizations in the southwest.

I understood this when my intimate acquaintance with him began as a member of the Commission to revise the Kansas Statutes, of which he was Chairman. I have never seen such capacity for hard work in any man in my life. He loved work for the sake of the work as much as did for the object to be attained. He at once built up an organization, and he not only worked himself, but he inspired all of the rest of us to work. I have never worked as hard for any client, for a cash fee, as I worked for Senator Long during those three years. He would work eight or nine hours a day, day after day. In all those three years I never heard him speak of weariness or show fatigue. He seemed to be absolutely tireless. He never drove us, it was simply his example which inspired us, and no other lawyer in Kansas, at the head of that Commission, could have completed this work in the time that we completed it.

He was one of the greatest Presidents the American Bar Association ever had. In fact, during that year I can say freely, from an intimate observation of the Association, that he was the Association; he was the last and deciding word on everything, and he was the finest presiding officer I ever saw in the Chair. If he had stayed in the

House, which he might have done, undoubtedly he would have become Speaker, but it was better that he should quit when he did.

I have spoken of him as a great man. Of what does greatness consist in a commonwealth like ours, where all men are born equal? If to fill great offices with such ability and distinction that he conferred honor upon the office, rather than the office upon him; if to have lived a life of simple and absolute rectitude, to have performed every task imposed upon him, to have fulfilled every obligation, to have been a tender husband, a loving father, a devoted friend—if these things constitute greatness, then my friend who lies here was a great man, and if these do not constitute greatness, then greatness is of little worth.

To me the world can never be quite the same since he has passed away. There was something in him so steadfast, so lovable, so dependable, that it was a comfort to know he was somewhere where I could reach him. I am grateful for the opportunity given me to pay this simple and truthful tribute, and so, old friend, farewell.

Resolutions of Wichita Bar on Senator Long

THE Wichita Bar Association, of which Senator Long was a member, met on July 14 in a memorial session to honor his memory. Judge Thornton W. Sargent, president, was in the chair. The following resolutions were presented by former Congressman Richard E. Bird, chairman of the Resolutions Committee, and unnanimously adopted:

Honorable Chester I. Long, a member of our Bar, former United States Senator for Kansas and former President of the American Bar Association, died in Washington, D. C. on the first day of July, A. D. 1934.

In deepest respect to his memory and to attest his scholarly attainments and the honor that he achieved for our profession, we meet to express our appreciation and to place in our permanent record a statement of his public and professional career.

Chester I. Long was born in Perry County, Pennsylvania, October 12, 1860; his parents were Abraham G. and Mary L. Long. When five years of age he moved with his parents to Daviess County, Missouri, and in 1879 he moved to Paola, Kansas. He pursued an academic course and studied law in Topeka, Kansas, in the office of Hon. George R. Peck, who was later to become President of the American Bar Association. Mr. Long was admitted to the practice of law March 4, 1885 and located in Medicine Lodge, Kansas. He married Anna Bache of Paola, Kansas, Februray 12, 1895. Mrs. Long died December 10, 1919. Their children are Agnes (Mrs. Harry F. Gee, Jr.) and Margaret (Mrs. W. E. Stanley) and a foster daughter Vera Clemes (Mrs. Robert Maxon.)

Chester I. Long was elected to the Kansas State Senate for the term 1889-93. He was a member of the Fifty-fourth, Fifty-sixth and Fifty-seventh Congresses for the Seventh District of Kansas; he was re-elected to the Fifty-eighth Congress but before taking seat was elected to the United States Senate for the term 1903 to 1909. After his tenure of office in the United States Senate was concluded he was offered a portfolio in the Cabinet of President William Howard Taft. With a purpose to resume his practice of law he declined this offer. He located in Wichita, Kansas, and from that time until his death he practiced extensively both in Wichita and in Washington, D. C. He ranked as a leading attorney in the American Bar and no attorney in this part of the Nation practiced more before the United States Supreme Court that did Mr. Long.

For many years Mr. Long was interested in the American Bar Association. He served on its most important committees and in 1925 he was honored by being elected its President. When the American Bar Association Journal was founded he was named as a member of its Board of Editors and served in that capacity until his death. He was a member of the Wichita Bar Association and the Kansas State Bar Association, serving as its President in 1922. He was also a member of the American Society of International Law.

A memorable incident in the life of Senator Long occurred when the United States Circuit Court of Appeals for the Tenth Circuit met for the first time in Wichita, Kansas, and organized in October, 1929. That Honorable Body convened its session with Judges Robert E. Lewis, John H. Cotteral, Orie L. Phillips and George T. McDermott sitting and Judge Lewis presiding. The Court announced that the court was duly organized but at the present moment was without a Bar, that the Court had considered the matter; that Honorable Chester I. Long individually and as President of the American Bar Association had performed an outstanding service in bringing about the creation of the Tenth Circuit Court of Appeals District and to him should come the honor of becoming the Bar of the Court. Thereupon, he was duly sworn in as the Bar of that august Court. Senator Long then moved the admission of his Brother Lawyers to that Bar.

In 1923 the Senator was named as Chairman of a Committee to Revise our Kansas Statutes, which work was done in a notably prompt, efficient and competent manner.

Senator Long's most outstanding characteristics were those of industry, untiring energy, devotion to duty, the maintaining of high standards in the legal profession and an absolute courage of his convictions.

His life may well be emulated, his work was well and faithfully done. He established himself as one of the great American Lawyers of our generation. He did much to place the American Bar in high repute throughout the World.

To the Bar of Wichita, the loss is indeed great. We knew Senator Long intimately and we loved him. His place among us can not be filled and in our hearts remains gratitude that we knew him and worked with him.

To the full intent and purpose of preserving his memory, which we honor and revere, we submit the record and so resolve.

Respectfully submitted. RICHARD E. BIRD, Chairman; EARLE W. EVANS, JOHN W. ADAMS, CHARLES H. BROOKS, BENJ. F. HEGLER.

A CLASSIFICATION OF OUR LAW SCHOOLS

Many of Our Law Training Institutions Still Fail to Meet the Minimum Standards of the American Bar Association in Respect to Requirements for Admission and Length of Course — Some of This Number Connected with Universities of Standing but Majority Are Commercial Schools

By Alexander B. Andrews
Secretary of Section of Legal Education, American Bar Association

IN 1921 the American Bar Association adopted certain standards of legal education proposed by a committee headed by Elihu Root. Among these standards were the requirements of a two-year prelegal college education and of a three-year course in a full-time school or a course of equivalent length, interpreted as four years, in a part-time school. At the present time 23 states, either presently or prospectively, require of substantially all their candidates two years of college work before taking the bar examination. (In 18 of these states the college education must be completed before the beginning of the law school training.)[1] In 16 other states the Standards of the American Bar Association have been approved by action of the State Bar Association.[2] The total lawyer population of these 39 states amounts to 88 percent of all the lawyers in the United States. There are 19 jurisdictions which require three years of law study if that is conducted in a full-time school or four years if in a part-time or evening school. It thus appears that in the overwhelming number of states where a very great proportion of our lawyers practice, the standards set by the American Bar Association of two years of college education and three years training in a full-time school or four years in a part-time school are recognized as a desirable minimum.

A scrutiny of our law schools, however, shows the astonishing and rather deplorable fact that out of 199 law training institutions only 118 even profess to live up to these requirements. The following tables have been prepared from data contained in the Annual Review of Legal Education compiled by the Carnegie Foundation for the Advancement of Teaching.

TABLE I

199 Law Schools, 1933, Tabulated to Show Relativity of Compliance with Certain Standards of the American Bar Association

	Morning	Mixed	Afternoon	Evening	Total
(A) Approved by ABA.....	73	11	..	1	85
(B) Schools conforming according to their catalogue to requirement of two years' prelegal college education and three years' full-time or four years' part-time study	6	3	3	21	33
(C) Schools conforming to requirement of two years' prelegal education but not conforming as to length of law course.....	..	4	6	2	12
(D) Schools conforming as to length of law course but not as to prelegal educational requirement	2	4	5	22	33
(E) Schools not conforming either to prelegal requirement or to recommended length of law course.....	3	2	5	26	36
	84	24	19	72	199

NOTE: A morning school is one which is full-time, that is, its hours are so arranged that the great majority of class hours are held either in the morning or in the early afternoon. A mixed school is one having classes both in the morning and in the late afternoon or evening, or sometimes both in the afternoon and evening. An afternoon school is one which holds its classes in the afternoon or in the afternoon and evening. An evening school is one which holds its sessions at night.

TABLE II

The attendance in the schools of the type listed above for the past school year was as follows:

	Morning	Mixed	Afternoon	Evening	Total
(A) Approved by ABA.	14,029[4]	4,675	....	73	18,777[1]
(B) Schools conforming according to their catalogue to requirement of two years' prelegal college education and 3 years' full-time or 4 years' part-time study	627	820	1,074	1,996[1]	4,517[1]
(C) Schools conforming to requirement of 2 years' prelegal education but not conforming as to length of law course.....	...	5,205	951[2]	75[1]	6,231[3]
(D) Schools conforming to length of law course but not as to prelegal educational requirement	183	442[2]	970[3]	2,164[5]	3,759[10]
(E) Schools not conforming either to prelegal requirement or to recommended length of law course	344	291[1]	157[2]	2,850[4]	3,642[7]
	15,183[3]	11,433[3]	3,152[6]	7,158[11]	36,926[23]

NOTE: The superior figures denote the number of schools which did not furnish attendance figures for the past year.

This table indicates that less than one-half of the students in our law schools today are attending institutions approved by the American Bar Association. Another twelve percent are attending insti-

1. 18 states where two years of college are required before law study: Alabama, Colorado, Connecticut, Delaware, Illinois, Kansas (3 years), Massachusetts, Michigan, Minnesota, Montana, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, New Mexico. 5 states where two years of college are required before admission but not necessarily before law study: Idaho, North Dakota, Virginia, Wisconsin, Wyoming.

2. 16 states where the State Bar Association has approved the Standards of the American Bar Association: Arizona, California, Florida, Georgia, Indiana, Iowa, Louisiana, Missouri, Nebraska, Nevada, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah.

tutions whose entrance requirements or length of course are stated as being those which are recommended. This means that in over one-third of our schools these widely approved recommendations have been and still are being entirely disregarded. In the 23 schools which failed to report their attendance last fall, it is estimated there are something over 3,000 students, bringing the total for the year up to about 40,000.

If these schools are listed by states, then it appears that the District of Columbia, Georgia, Indiana, Tennessee, and Texas, are the worst offenders. However, there are also a considerable number of schools in California, Massachusetts and Missouri which do not require any college education for admission. In the following table the classification, A, B, C, D, E, indicates the same group to which it was applied in Tables I and II:

TABLE III

LAW SCHOOLS CLASSIFIED BY STATES

	A	B	C	D	E	All
Alabama	1	..	..	1	1	3
Arizona	1	..	..	..	..	1
Arkansas	1	..	..	..	1	2
California	3	5	..	11	1	20
Colorado	2	..	1	..	..	3
Connecticut	2	..	..	..	..	2
Delaware	..	..	..	..	..	..
District of Columbia	4	..	..	..	4	8
Florida	2	2	..	..	..	4
Georgia	3	..	..	..	4	7
Idaho	1	..	..	..	..	1
Illinois	5	1	3	..	..	9
Indiana	3	..	..	1	3	7
Iowa	2	..	..	1	..	3
Kansas	2	..	..	..	..	2
Kentucky	2	..	..	..	2	4
Louisiana	3	..	..	..	..	3
Maine	..	..	..	1	..	1
Maryland	1	..	..	..	1	2
Massachusetts	3	..	..	5	..	8
Michigan	2	2	..	..	.*	4
Minnesota	1	4	..	..	..	5
Mississippi	1	..	..	..	1	2
Missouri	3	1	..	4	..	8
Montana	1	..	..	..	..	1
Nebraska	2	..	..	1	..	3
Nevada	..	..	..	..	..	..
New Hampshire	..	..	..	..	..	..
New Jersey	..	1	3	..	..	4
New Mexico	..	..	..	..	..	..
New York	5	1	4	..	..	10
North Carolina	2	1	..	..	1	4
North Dakota	1	..	..	..	..	1
Ohio	3	11	..	..	..	14
Oklahoma	1	1	..	1	..	3
Oregon	1	..	1	1	..	3
Pennsylvania	4	2	..	..	..	6
Rhode Island	..	..	..	..	..	..
South Carolina	1	..	..	..	..	1
South Dakota	1	..	..	..	..	1
Tennessee	2	..	..	..	10	12
Texas	3	..	..	6	6	15
Utah	1	..	..	..	..	1
Vermont	..	..	..	..	..	..
Virginia	4	..	..	..	1	5
Washington	1	1	..	..	..	2
West Virginia	1	..	..	..	..	1
Wisconsin	2	..	..	..	..	2
Wyoming	1	..	..	..	..	1
	85	33	12	33	36	199

A further paragraph of the Standards provides that a school "shall not be operated as a commercial enterprise and the compensation of any officer or member of its teaching staff shall not depend on the number of students or on the fees received." A survey which has been undertaken the past spring of law schools in the country will doubtless furnish some interesting information on this point. This does not appear from the Carnegie figures. It is, however, true that it is very generally the case that a law school which is connected with an established college or university is not operated on a commercial basis. Of the other law schools it seems safe to say that most of them are commercial, but that some of them clearly are not. In any event, it seems helpful to classify the schools as to their connection or non-connection with an established college or university.

TABLE IV

College or University

Class	Morning	Mixed	Afternoon	Evening	Total
A	73	11	..	..	84
B	6	3	1	5	15
C	..	3	1	..	4
D	1	..	..	..	1
E	1	..	..	..	1
	81	17	2	5	105

Independent Schools Non-Collegiate

Class	Morning	Mixed	Afternoon	Evening	Total
A	..	..	..	1	1
B	..	..	2	16	18
C	..	1	5	2	8
D	1	4	5	22	32
E	2	2	5	26	35
	3	7	17	67	94

By enrollment the figures are as follows:

TABLE V

College or University

Class	Morning	Mixed	Afternoon	Evening	Total
A	14,029[1]	4,675	....	....	18,704[1]
B	627	820	55	536	2,038
C	....	4,621	31	....	4,652
D	134	....	....	....	134
E	299	....	....	....	299
	15,089[1]	10,116	86	536	25,827[1]

Independent Schools Non-Collegiate

Class	Morning	Mixed	Afternoon	Evening	Total
A	....	....	....	73	73
B	....	....	1,019	1,460[1]	2,479[1]
C	....	584	920[2]	75[1]	1,579[3]
D	49	442[2]	970[2]	2,164[5]	3,625[10]
E	45	291[1]	157[3]	2,850[4]	3,343[8]
	94	1,317[3]	3,065[8]	6,622[11]	11,099[22]

Reducing these figures to percentages gives the following results:

TABLE VI

Percentage of Enrollment in Law Schools Classified According to Their Connection or Non-Connection with an Established College or University

	College	Non-College	All
A	50.65	.19	50.84*
B	5.51	6.71	12.22*
C	12.59	4.27	16.86*
D	.36	9.80	10.16
E	.81	9.04	9.85
	69.92	30.01	99.93

*Two years college requirement.

Percentage of Total Enrollment Attending Law Schools Having Two Years' College Admission Requirement

A	50.84
B	12.22
C	16.86
	79.92

Of 105 schools connected with colleges or universities, 84 have been approved by the American

Bar Association. Only one school on the approved list is not so connected, although in several other cases that connection is in fact purely nominal. It is interesting to examine the other 21 schools connected with colleges or universities which are not on the approved list of the American Bar Association, as it would appear that immediate further improvement of the schools is most likely to be found in this list. Those 21 schools are as follows:

LIST OF SUB-STANDARD SCHOOLS CONNECTED WITH COLLEGES OR UNIVERSITIES

Class B (Total 15)

(First Figure Indicates Enrollment, During Past Year. Figure in Parentheses Indicates Date of Adoption of Two-Year College Requirement)

Morning (6)

Calif.—University of California, Hastings College of the Law. 279 (1920)
University of Santa Clara, College of Law. 22 (1920)
Fla.—University of Miami, The School of Law. 26 (1926)
N. Y.—The University of Buffalo, School of Law. 171 (1927)
N. C.—Wake Forest College, School of Law. 171 (1925)
Ohio—Ohio Northern University, College of Law. 62 (1928)

Mixed (3)

Calif.—Loyola University, College of Law. 137 (1926)
University of San Francisco, The Law School. 183 (1931)
Pa.—Philadelphia College of Law, 31. (1931)

Afternoon (1)

Ohio—University of Dayton. 55. (1928)

Evening (5)

Mich.—College of the City of Detroit Law School. 187 (1929)
Ohio—Xavier University Law Courses. 17 (1925)
The University of the City of Toledo, Law Department. 86 (1928)
Pa.—Duquesne University, The School of Law. 164 (1929)
Wash.—Gonzaga University School of Law. 82 (1920)

Class C (Total 4)

Morning (0)

Mixed (3)

N. Y.—St. Lawrence University, The Brooklyn Law School. 1,379 (1930)
Fordham University, School of Law. 1,066 (1927)
(Part-time school goes on four year basis in fall of 1934)
St. John's College, School of Law. 2,176 (1930)

Afternoon (1)

Ore.—Willamette University, College of Law. 31. (1926)

Evening (0)

Class D (Total 1)

Morning (1)

Ind.—University of Indianapolis, Butler Univ., Indiana Law School. 134

Mixed (0)

Afternoon (0)

Evening (0)

Class E (1)

Morning (1)

Tenn.—Cumberland University, Law School. 299

Mixed (0)

Afternoon (0)

Evening (0)

It will be noticed that only two of these schools do not require two years of prelegal college education for admission and only four others fail to have the requisite length of law course, that failure consisting in having a part-time course of only three years as opposed to the approved four-year standard. The other 15 schools are listed under Class B, and according to their own statement require two years of college education for admission and a three-year course of legal training if they are full-time schools or a four-year course if they are part-time schools. The reason that they are not on the approved list of the American Bar Association is usually because of their failure to meet other requirements laid down in the Standards. In brief, these are requirement of a law library of 7,500 usable volumes, a minimum of three full-time teachers, and not less than one for each 100 students in the school; adequate housing and facilities for work, and operation on a non-commercial basis. The reason for non-approval has also been in some cases that the nominal standards of admission of the school are not the actual standards. Moreover, where a school has plainly failed to live up to standards of scholarship, teaching, and general excellence of the kind to be found in other approved schools the Council has felt justified in withholding recognition.

The majority of universities or colleges with which these schools are connected have been approved by the accrediting agencies in their states despite the fact that their law schools do not have the rating of being approved by the American Bar Association. Obviously these schools have the possibility of meeting the Standards which have been laid down. One of them was a former member of the Association of American Law Schools, and a number of others have applied for approval by the American Bar Association or expressed their intention of applying in the future. This is a situation where the influence of bar associations and legal education committees can bring about considerable improvement. It is only necessary in most cases that the importance of compliance by the schools with the rules which have been laid down by the American Bar Association be appreciated. The Council on Legal Education of the American Bar Association is anxious to be of help in this regard, and welcomes the assistance of state and local associations and of the schools.

A Bar President on Fishing

(Chambers Kellar in South Dakota Bar Journal, July, 1934)

Fishing is my text. The Sport of Sports. The Recreation of all Recreations for Bench and Bar. Therefore, Brethren, be fishers, not of men but of fish. And not of all fish either, but of those only whose fighting spirit and wariness will test your skill and patience. A golf ball in the rough has nothing on a snarled line to make one forget his business worries and the presence of ladies. The joy of bringing to net a pound rainbow on a No. 14 fly is only equalled by that of securing a rehearing from the Supreme Court. The cobwebs of the brain get the jitters at the very name of Paramacheene Belle or Dusty Miller. But the virtue of this glorious sport lies not alone in the casting of the fly, nor the landing of the trout, but in the splendid opportunities to study God's world—nature, which whether raw or mild is every worthy of study. Pope's philosophy:

> "Know then thyself, presume not God to scan,
> The proper study of mankind is man,"

should be anathema to the outdoor sportsman, and especially to the lawyer whose daily work has to do with man at his worst. . .

And, Brethren, don't fish for the pot, and don't worm the trout into your creel. With the Bard of Avon I might say that the man who baits his hook with a wretched worm "is fit for treasons, stratagems and spoils," were I not reminded of a boyhood malediction which better fits the case and say, "Such a man would pull up green corn, shove sheep in a branch, has seven kinds of lice, and doesn't love Jesus."

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CHESTER ISAIAH LONG: 1860-1934

After long years of honorable and distinguished service to his country, his profession, and the organization which has dedicated itself to maintaining the great traditions of the lawyer's calling, Chester I. Long is dead.

No blurred and indistinct image does he leave on the recollection of his friends and associates who today mourn his passing. It is clear-cut and definite, because those were the characteristics of the man himself—of his mental processes, of his intellectual interests, of his modes of work, of his whole career. The time may not be ripe for a final estimate of the value and significance of his long and useful life. The future may give him a larger place than today. But he impressed himself too strongly on those who came into contact with him in his work in and for the profession for them not to feel that they knew the real man.

This definiteness of character did not mean that he was cast in a rigid mold—that his life was merely a progressive ossification of earlier habits and opinions. Some men obtain reputation for strength of character by that simple process. Not so in the case of Senator Long. The things he adhered to were those approved by reasoned conviction. He was always willing to look and listen. He was tolerant of opposition, patient of argument, and always conscientiously trying to base his conclusions fairly on as full a knowledge of the facts as he could possibly obtain. He was a man of real intellectual honesty and a victory secured by him on grounds which his mind did not genuinely approve would no doubt have been regarded by him as the equivalent of defeat.

He had an astonishing capacity for long and patient work, a great ability to master a multitude of details without being overwhelmed by them and losing sight of the main principles involved, and, what was equally important, a positive genius for cooperation. He was a good man to work with, as all those who have been associated with him are quick to attest, and he always did his share. He seemed to make it a point of honor to give his best to whatever he undertook—whether the matter was big or little. And of all these qualities the American Bar Association and the Journal of the organization were the continuous beneficiaries.

Senator Long's career showed that combined interest in professional and public affairs which was long a distinguishing mark of the great leaders of the Bar. Soon after being admitted to the Kansas Bar he was elected to the State Senate, becoming the youngest member of that body. Then followed, later, his contest for Congress with "Sockless Jerry Simpson" and the ideas which he represented—a struggle which resulted in the final elimination of that picturesque Kansan from politics and the return of Long to Congress at four elections. He served three terms and, as we are told by Mr. Rogers in his admirable sketch of him in "American Bar Leaders," became a leader in the House of Representatives, a member of the Committee on Ways and Means, and a speaker active in the constitutional and tariff questions which arose out of our territorial acquisitions following the Spanish-American War.

But before the beginning of the last term for which he was elected to the House of Representatives, Senator Long was chosen to the United States Senate, and there he again displayed all the qualities which had made him so successful in the Lower House. He became a Senator of strength and influence, interesting himself especially in the Philippine problems, in the Census and the organization and machinery of the Interstate Commerce Commission. In 1908 the Kansas Legislature adopted the direct primary for the election of Senators, and Senator Long was defeated for a second term. This ended his political career, but not his interest in the larger questions of politics—particularly those in which consti-

tutional questions were involved. This was one of his major interests to the end.

There are men who, under such circumstances, would have "lagged superfluous" on the political stage, having no thought or ambition except to get back in place and power. Senator Long was not of this type. He opened a law office in Wichita, returning to the practice when nearly fifty years of age—beginning his professional life anew. His ability, courage, cheerfulness and capacity for work and for impressing himself on others soon brought him success. Later on he also opened an office in Washington, dividing his time between both places. As we are told in the resolutions passed by the Wichita Bar Association, "He ranked as a leading attorney of the American Bar and no attorney in this part of the nation practiced more before the Supreme Court than did Senator Long." As Chairman of the Kansas Commission for Statutory Revision, organized in 1921, he rendered his State important service.

Paralleling his useful service to clients during this portion of his life, was his interest in and service to the American Bar Association. Joining the organization in 1912, he naturally soon became one of its most active and conspicuous members. He served as a member of the General Council, of which he was chosen Chairman—the latter position carrying with it membership on the Executive Committee. He also served on many important committees, and was a member of the National Conference on Uniform State Laws. At Detroit he was elected President and his term of office was one of the most successful in the history of the organization. At the Annual Meeting at Denver he again demonstrated his recognized ability as a presiding officer. In fact, for many years Senator Long was the parliamentary stand-by of the Association. His last work for the organization in an official capacity was as Chairman of the Special Committee on the National Securities Act, which made its report to the Executive Committee last May.

Senator Long's address as President at the Annual Meeting at Denver gives a good insight into the character and opinions of the man. His address was entitled "The Advance of the American Bar," and in it he faced frankly and fearlessly conditions which placed a heavy responsibility for leadership and action on the American Bar. The ineffective enforcement of the criminal law, the archaic and unsatisfactory nature of court procedure in many respects, in his opinion, called for prompt and effective measures of reform. But, he added characteristically and with well founded distrust of legislative tinkering, "Reforms, however, should come from within the profession and not from without. . . Let us see that our working tools are repaired, not destroyed. . . Let our slogan be 'Slow down the Legislatures and speed up the Courts.'"

Later in that address he dealt with matters which he regarded as of equal importance with positive reforms, namely, the protection of the jurisdiction of the Federal Courts and of certain constitutional principles which were then, and are always, the objects of assault. He denounced the Caraway bill, called attention to the progressive impairment of local self-government and the danger which it threatened, and emphasized the importance of the Supreme Court as "the one protection for the liberty of the individual." A conservative? Yes, for those who insist on the half-truths of labels; but a conservative who knew much of men and political history and sincerely believed that the great heritage of the past should be intelligently preserved.

Senator Long was one of those who, against the protests of some doubters, led the movement to change the Journal of this Association from a quarterly to a monthly issue and to change it from a mausoleum of archives to a mouthpiece of the general practitioner. This took courage, which he never lacked. He was named as a member of the first Board of Editors of the American Bar Association Journal. Those who were associated with him during the long years of his service in this position learned particularly to value the solidity of his judgment, the kindliness of his nature, and the sterling worth of his character. He was keenly alive to the vital questions presented from time to time in the field of law and government and active in endeavoring to secure suitable articles on them. No better man could have been chosen for the position which he so long and ably filled.

In another part of this issue Senator Smith pays a moving tribute to his old friend. The resolutions passed by the Wichita Bar, of which he was so long a member, are also given. With these we leave a life and career which were an honor to his profession and will long be treasured in the memory of all who knew him.

REVIEW OF RECENT SUPREME COURT DECISIONS

District of Columbia Code Provision Forbidding Remarriage of Guilty Divorced Party Does Not Render Void the Marriage of Party in Another Jurisdiction Nor Bar Enforcement in District of Property Rights Incident to Later Marriage—Lien Created by Illinois Law by Garnishment of Insurance Company Not Removed by Subsequent Filing of Interpleader Proceeding by Insurer in Another Jurisdiction and Securing of Injunction Therein Against Further Prosecution of Garnishment—Allowance for Depletion of Gas Wells in Determining Fairness of Public Utility Rates—Jurisdiction of State Courts over Causes of Action Arising under Federal Employers' Liability Act—Assignment of Future Wages to Secure Debt Not Enforceable Against Debtor after Discharge in Bankruptcy, etc.

By Edgar B. Tolman*

Conflict of Laws—Divorce—Alimony—Constitutional Law—Full Faith and Credit—Foreign Judgments

Prohibitions against remarriage of a divorced person are generally given only territorial effect, limited to the jurisdiction in which the divorce is granted. The prohibition against remarriage after divorce, imposed by §966 of the Code of the District of Columbia against the guilty party to the divorce proceeding, does not render void the marriage of such party in another jurisdiction in which such party had, in good faith, acquired a domicile, nor does it bar such party from enforcement in the District of property rights incident to the later marriage.

The decree of court, granting a second divorce *a mensa et thoro* and awarding alimony to the party found guilty in the prior District of Columbia divorce, is entitled to full faith and credit in the District of Columbia, notwithstanding the prohibition of marriage by the District Code, and the party to whom the alimony was awarded is entitled to recover in the District, alimony due under the latter decree.

Loughran v. Loughran, Adv. Op. Vol. 78, p. 798; Sup. Ct. Rep. Vol. 54, p. 684.

This opinion dealt with the right of a widow to enforce rights in the nature of dower and to recover unpaid alimony from the estate of her deceased husband. The widow, petitioner, had brought suit in the Supreme Court of the District of Columbia for the relief stated, and there obtained relief in respect to the claim in the nature of dower. The Court of Appeals of the District reversed the decree. But on certiorari the decree of the latter was reversed by the Supreme Court, in an opinion by Mr. Justice Brandeis.

The petitioner alleged that she married Daniel Loughran, Jr., in 1926 in Florida, where she was then domiciled and had lived for more than two years; that in 1927 she and Loughran became domiciled in Virginia; that in 1929, while she and Loughran were residing in Virginia, she obtained there a decree of divorce from him *a mensa et thoro*, with an award of alimony; that in 1931, while she remained Loughran's wife he died, leaving part of the alimony unpaid.

The respondents, trustees of real estate in which the estate of Loughran had an interest, defended on the ground that the circumstances of petitioner's divorce previous to her marriage to Loughran barred her recovery. They alleged that in 1924 she had been divorced by Henry Daye on the ground of her adultery with Daniel Loughran, Jr.; that under § 966 of the Code of the District she was prohibited from remarrying and was not in position to enforce the alleged rights in the estate of the deceased.

Section 966 of the Code provides that "A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *Provided*, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: . . ."

In reversing the decree of the Court of Appeals Mr. Justice Brandeis first pointed out that generally prohibitions on the remarriage of divorced persons are given only territorial effect.

> Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the State where entered into, be recognized as valid in every other jurisdiction. . . The mere statutory prohibition by the State of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another State in conformity with the laws thereof.

The opinion clearly points out that the decision is not concerned with the question as to what the rights of the parties would be if they had retained a domicile in the District, and had been married in Florida merely to evade the prohibition of § 966. In this connection, after rejecting the trustee's argument that the marriage must be treated as void under § 1287 of the Code, the opinion states:

> Moreover, it does not appear that the plaintiff and Daniel did retain their domiciles in the District after her divorce, or that after the Florida marriage they ever lived in the District as man and wife. The trustees argue that it must be assumed on the pleadings that plaintiff's residence in Florida and the marriage there were not in good faith. But the bill alleged the good faith of the residents and marriage in Florida; and the answer contains no specific denial of that allegation. Nor does it contain any averment that the residence in Florida and marriage there were with the intent of evading the prohibition against remarriage. The Court of Appeals did not pass upon the issue sought to be raised. It expressly disclaimed deciding whether the Florida marriage was valid or what the effect of the Virginia decree was. And the question whether the marriage in Florida should be deemed void within the District because the parties went to Florida to evade the prohibition of § 966 was not presented by the petition for a writ of certiorari.

The opinion then discussed the view of the Court of Appeals that the dismissal of the bill was to be determined irrespective of the validity of the marriage under Florida law. In this connection the court emphasized the controlling effect of the validity of the

*Assisted by James L. Homire.

marriage on the enforcement of the petitioner's rights, so far as substantive law was concerned, and said:

> The requisites of dower are a valid marriage; seizin of the husband; and his death. It may be assumed that the law of the situs of real estate determines whether a widow is entitled to dower. . . But, if the marriage was valid under the laws of Florida, the plaintiff was, under established doctrines of the conflict of laws, Daniel's widow. As such she was entitled, as an incident of the marriage, to dower in the property within the District. For, while a statute of the District provides for forfeiture of dower in case of the wife's adultery during marriage; none denies dower to a widow because she had been guilty of adultery prior to the marriage with her late husband.
>
> Section 966 is not extra-territorial in its operation. It does not purport to prohibit remarriage outside the District; and no other statute denies dower to a widow because by remarrying elsewhere she had disregarded the prohibition contained in § 966. It does not make remarriage a crime, or in terms impose any penalty, even if contracted within the District; and obviously it could not make criminal remarriage elsewhere. Nor does it in terms declare the remarriage void. Apparently, it is the law of the District that a remarriage elsewhere in disregard of the prohibition of § 966, even where both parties remained domiciled in the District, is not void *ab initio*, but, at most, voidable; and that a voidable marriage cannot be annulled after the death of either spouse.

With respect to the question of alimony the Court concluded that the Virginia decree was entitled to full faith and credit, and the facts of record afforded no basis for dismissal of the bill so far as it sought to recover unpaid alimony. As to this MR. JUSTICE BRANDEIS said:

> The right to recover the alimony is independent of the right to dower. It rests upon a judgment to which, so far as appears, full faith and credit must be given by the courts of the District. It is true that, under rules of law generally applicable, these courts may refuse to enforce a mere right of contract if it provides for doing within the District things prohibited by its laws. . . It may, in the exercise of the police power, prohibit the enjoyment by persons within its borders of many rights acquired elsewhere and refuse to lend the aid of its courts to enforce them. . . But when rights, however arising, have ripened into a judgment of a court of another State, the full faith and credit clause applies. . . And courts of the District are bound, equally with courts of the States, to observe the command of the full faith and credit clause, wherever applicable. . . Thus, the facts stated afford no basis in the substantive law for dismissal of the bill so far as it seeks to recover unpaid alimony.

In conclusion the Court discussed the question whether any principle of adjective law justified the denial of relief. Concluding that neither the doctrine of clean hands nor any kindred principle of equity barred the petitioner MR. JUSTICE BRANDEIS said:

> The suit at bar was brought after termination of the marriage by death to enforce existing property rights growing out of the marriage in Florida and the decree entered in Virginia. It was not brought to enforce any transaction had within the District; nor was it brought to enforce an illegal contract; or to further an illegal relation. Equity does not demand that its suitors shall have led blameless lives. Neither the doctrine of clean hands, nor any kindred principle on which courts refuse relief, is applicable here.

The case was argued by Mr. Robert H. McNeill for the petitioner and by Mr. William E. Leahy for the respondents.

Conflict of Laws—Attachment—Garnishment—Interpleader

According to Illinois Law, garnishment of an Insurance Company creates a lien on the fund due from the company to the principal defendant. Such lien is not removed by the subsequent filing of an interpleader proceeding by the garnishee in another jurisdiction and the deposit of the fund in court, when the plaintiff and principal defendant appear in the interpleader suit, present their respective claims to the fund and the further prosecution of the garnishment proceeding is enjoined.

Sanders v. Armour Fertilizer Works and National Fire Insurance Company, Adv. Op. Vol. 78, p. 807; Sup. Ct. Rep. Vol. 54, p. 677.

This case involved the effect of a garnishment proceeding brought in Illinois by a creditor of an insured in relation to insurance money, paid into a federal court in Texas by insurance companies on bills of interpleader. Sanders, the insured, obtained two fire insurance policies on his house in Texas. A fire occurred resulting in an adjustment of liabiity on the two insurers in the sum of $3,400 and $4,250 respectively, which they agreed to pay.

After the fire, but before the adjustment, Armour Fertilizer Works brought suit against Sanders in the municipal court of Chicago to recover $7,589.81 on promissory notes. Jurisdiction was obtained by publication and attachment, on grounds of nonresidence, through garnishment proceedings against the insurance companies. Sanders did not appear and judgment went against him by default, and levy of execution was directed. He advised the insurers that the proceeds of the policies, under Texas law, were exempt from seizure, because the insured building was his homestead, and that he would hold the insurance companies.

The insurers then filed bills of interpleader in Texas, impleading Sanders and the Armour Fertilizer Works, under U.S.C.A. 28, Sec. 41 (26), and paid the amount due into court. Armour answered praying dismissal of the bill, or that the amount deposited be paid to it. Sanders answered, setting up the exemption under Texas law. The District Court first held that it had no jurisdiction and dismissed the bills. On reversal by the Circuit Court of Appeals it took jurisdiction, enjoined Armour from proceeding in the Illinois Court, and on the merits awarded the fund to Sanders. The Circuit Court of Appeals again reversed, holding that the award should be to Armour. On certiorari the latter ruling was affirmed by the Supreme Court, by divided bench. MR. JUSTICE MCREYNOLDS delivered the prevailing opinion.

The principal question, and the one on which the Court divided, related to the effect of the garnishment proceeding in Illinois. As to this the majority opinion concluded that the attachment and judgment in Illinois were a lien on the proceeds which gave precedence to the Armour claim to the fund. With reference to this MR. JUSTICE MCREYNOLDS said:

> We are not now primarily concerned with rights of a garnishee. The Insurance Companies have paid their debts and obtained complete discharge. Only Sanders and the Armour Fertilizer Works are interested.
>
> He presented claims against Connecticut corporations arising under insurance contracts which he had not undertaken to enforce. These were free from execution in Texas. He might have sued upon them in Illinois; there they were subject to valid attachment.
>
> The Armour Fertilizer Works an Illinois corporation, presented the judgment against Sanders duly rendered by a court of that State in a proceeding properly begun and prosecuted. It had secured a lien upon the claims against the Insurance Companies. There is no ground for any claim of fraud. True, no final judgment had gone against the garnishees; but as between Sanders and the Fertilizer Works judgment stood against him; also, sequestration of the debts. The precise effect which would be given this preliminary judgment, as against the garnishees, in proceedings involving their rights may be doubtful, but opinions by the Supreme Court of Illinois clearly indicate that Armour Fertilizer Works secured a lien upon the Sanders claims; and that, but for the injunction, final valid judgment would

have gone against the Insurance Companies, accompanied by a lien good against all the world.

The effect of the proceedings in Illinois as against one occupying the position of Sanders is plain enough under her statutes and decisions. The Illinois courts would have rejected his claim of exemption under the laws of Texas. This view is affirmed here by agreement.

The Illinois rule is that garnishment imposes an inchoate lien subject to defeat by certain subsequent events, none of which are present here. Also, that final judgment in Illinois against the garnishee prior to one in another jurisdiction is conclusive of the rights of the parties. Also, "that property, real and personal, attached, and funds in the hands of the garnishee, are placed on the same footing,—that is, when attached, such property or funds are appropriated from that time to the payment of a certain class of judgment creditors specifically enumerated." Accordingly, the principal debtor may not assign his claim against the garnished one after the writ has been served upon the latter. . .

In the circumstances presented the proceedings in Illinois gave to Armour Fertilizer Works a paramount right or superior equity to the proceeds of the policies. To hold that the District Court in Texas could enjoin the Fertilizer Works from proceeding further and then declare that because the last step in the Illinois suit had not been taken Sanders, in some way, became entitled to priority, plainly would be inequitable. Moreover, it would deny to the garnishment proceedings the credit and effect accorded them in the State where taken.

The minority opinion, by MR. JUSTICE CARDOZO, expressed the view that the garnishment, under Illinois law, did not constitute a lien on proceeds, since no execution had been levied. As to the effect of the garnishment proceeding he said:

> Garnishment in Illinois does not create a lien upon the debt or chose in action subjected to the writ. . . In substance it is a monition whereby the defendant is apprised that he will be acting at his peril if he makes a *voluntary* payment to the original creditor, the peril consisting in this, that he may have to pay again. . . The writ has no effect upon involuntary payments before the stage of judgment. Some other attaching creditor, suing the same defendant, may garnish the same debt in another jurisdiction. The Illinois plaintiff, though the first to have recourse to garnishment, will be postponed to the other plaintiff who is first with execution. . . Indeed, the primary creditor, i e., the debtor of the attaching plaintiff, may bring suit against the garnishee in another jurisdiction, and collect the indebtedness if he wins the race to judgment. . . The garnishment suit is *in personam* against the debtor of a debtor. . . and the *res* is not impounded till the compulsion of judgment and execution has caused it to be paid. Then, but not before, the garnishee will have protection against the hazard of conflicting claims.

In conclusion, MR. JUSTICE CARDOZO discussed the effect of judgment against Sanders, urging that, since it rested on service by publication, it was not valid as a judgment *in personam* in the absence of a lien operating *in rem*, and that failure to consummate the garnishment proceeding caused any inchoate lien to end. As to this, he said:

> The claimant Sanders was entitled to the money unless the Armour company had a lien, and the courts of Illinois had held there was no lien. True there had been a judgment against Sanders, though not against his codefendant, the insurer, but this judgment had been obtained by default after service by publication, not followed by an appearance. It was therefore ineffective as a judgment *in personam*, and in the absence of a lien did not operate *in rem*. . . The joinder of Sanders had no effect except to give him notice of the garnishment and an opportunity to come in, if he was so minded, and contest the plaintiff's claim. . . He declined the invitation and preferred to litigate at home. Whatever lien has been adjudged as the result of his default was contingent upon the consummation of proceedings to charge the garnishee, and ended when they lapsed, just as if the suit were discontinued. It did not rise to the rank of a general interest in property, adhering to the debt everywhere and qualifying the title in another jurisdiction. Probably no one would contend that by force of the judgment against Sanders a suit could have been maintained by Armour as *quasi* owner of the policies outside of Illinois. If that was so before the interpleader, it was even more plainly so thereafter. By the express terms of the decree the stakeholder was discharged when the fund was paid into the registry . . . with the result that there was no longer the possibility of pursuing the garnishee anywhere and thus perfecting the attachment. If some inchoate incumbrance had existed until then, it was then obliterated forever. The fund was free and clear.

The federal court in Texas was thus driven to a choice between a claimant with a foreign attachment which by the law of its creation was of no extraterritorial validity till it had ripened into payment under the compulsion of a judgment, and a claimant whose title to the fund was undisputed unless the lien of the attachment was presently effective. It is not easy to see how there could be any choice but one.

There was no oral argument.

Public Utilities—Rate Regulation—Allowance for Depletion of Gas Wells

In determining the fairness of rates for gas sold by a public utility company to the public, the company is entitled to include, as an operating expense, a reasonable allowance for the depletion of gas wells presently in use in the production of gas.

Columbus Gas and Fuel Co. v. Public Utilities Commission of Ohio et al., Adv. Op. Vol. 78, p. 885; Sup. Ct. Rep. Vol. 54, p. 763.

Certain questions in this opinion, dealing with rates charged for gas sold by the appellant in Columbus, Ohio, are related to the questions discussed in *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, decided April 30, 1934. Here the questions arise out of a controversy as to the adequacy of natural gas rates fixed by an ordinance of Columbus, Ohio, fixing 48 cents per thousand cubic feet as the rate to be charged for 5 years from November 12, 1929.

The appellant, Columbus Gas and Fuel Company, supplies gas to consumers in Columbus. It obtains the gas from the Ohio Fuel Gas Company, an affiliated corporation. The latter obtains the gas in part from its own fields, in part from the United Fuel Gas Company, another affiliate, and in part from independent producers. The three affiliated corporations are subsidiaries of the Columbia Gas & Electric Corporation.

On December 31, 1929 the appellant applied to the State Public Utilities commission to have the ordinance rate declared inadequate and for the substitution of such other rate as might be found just and reasonable. Determination of such rate required investigation as to the property value and expenses of the appellant and its affiliates.

Until some time in 1929 the appellant purchased gas from Ohio Fuel Gas Company under a contract for delivery at the city gateway at 65% of the local retail rate. On the basis of the local retail rate of 48 cents the gate rate was 31.2 cents. By consent this contract was cancelled in 1929, and a gate rate of 45 cents was established in place of the 31.2 cent rate. Most of the record grew out of controversy as to the fairness of the 45 cent rate. It became necessary also to inquire into the property and expenses of the United Fuel Gas Company which produces gas in West Virginia and sells to the Ohio Fuel Gas Company (delivery being made at the Ohio River), in order to determine the propriety of the rate on gas delivered to the latter by the former. The rate on such gas is known as the "river rate."

A majority of the Commission found that the fair gateway price was 39.02 cents per thousand cubic feet, and entered an order declaring the 48 cent retail rate inadequate. It established a rate of 55 cents instead of the ordinance rate.

A minority of the Commission found that 31.70

cents was a proper gateway price and that a fair retail rate was 47.95 cents.

Cross-appeals were taken to the Ohio Supreme Court. There the Columbus Company contended that nothing less than a 69.59 cent rate would yield a fair return. The City contended that the ordinance rate should be upheld.

The State Supreme Court held for the City, and adopted the principal conclusions reached by the minority of the Commission. In so ruling it set aside the Commission's finding that the operating expenses of the affiliated seller should include $4,158,954 to amortize depletion of gas fields and appurtenant equipment. It also held that the "river price" paid by the Ohio Company was too high, and that it should be 17.79 cents instead of 22 cents per thousand cubic feet. The upshot of the matter was that the State Court upheld the ordinance rate, reversing the Commission and directing that the ordinance rate be established.

On appeal to the Supreme Court the Ohio Supreme Court decree was reversed, in an opinion by MR. JUSTICE CARDOZO. Certain issues not determined in the *Dayton* case were here found to require decision.

Among these was the propriety of an allowance for amortization and depletion of leaseholds presently in use and leaseholds held for future use. The state court had concluded that the statute required exclusion of allowance for such depletion. But MR. JUSTICE CARDOZO pointed out that the statutory provision cannot stand in conflict with federal constitutional restrictions on the state. In this connection he said:

> We may assume in submission to the holding of that court that the amortization allowance must be rejected if the rate making process is to conform to the rule prescribed by statute, irrespective of any other. That assumption being made, the conclusion does not follow that the statutory procedure may set at naught restrictions imposed upon the states and upon all their governmental organs by the constitution of the nation.
>
> To withhold from a public utility the privilege of including a depletion allowance among its operating expenses, while confining it to a return of 6½% upon the value of its wasting assets, is to take its property away from it without due process of law, at least where the waste is inevitable and rapid. The Commission has found that the life expectancy of the operated gas fields is only three years and two months. If that holding is correct, the owner of the exhausted fields will find itself in a brief time with wells and leases that are worthless and with no opportunity in the interval to protect itself against the impending danger of exhaustion. Plainly the state must either surrender the power to limit the return or else concede to the business a compensating privilege to preserve its capital intact.

Turning then to the propriety of depletion allowance, a distinction was drawn between leases actually in operation and those held in reserve. Holding that it was error to exclude such allowance in respect of leases presently in use, as distinguished from those held for remote future use, MR. JUSTICE CARDOZO said:

> We hold that a fair price for gas delivered at the gateway includes a reasonable allowance for the depletion of the operated gas fields and the concomitant depreciation of the wells and their equipment. What that allowance shall be has not yet been considered by the Supreme Court of Ohio, invested with jurisdiction to review the law and facts. . . The court will have to say in the light of all the circumstances whether the amount to be allowed shall be the same as that fixed by the Commission ($4,158,954), or something less or greater. It may disagree with the Commission either as to the value of the fields or as to the life expectancy of the supply of gas. There will be power, we assume, to direct another hearing if the basis for an intelligent judgment is lacking in the record. When the allowance has been fixed and has been charged to operating expenses, it will supply the answer to other questions in controversy now. There will be no need, when that is done, to include in operating expenses a separate provision for the payment of "delay rentals" upon leases in reserve. This is so for reasons that were explained in the *Dayton* case. "Operating expenses are magnified unduly if they cover both the fund and the payments that are made out of it." . . There will be no need in the computation of the rate base to include the market or the book value of fields not presently in use, unless the time for using them is so near that they may be said, at least by analogy, to have the quality of working capital. The arrival of that time cannot be known in advance through the application of a formula, but within the margin of a fair discretion must be determined for every producer by the triers of the facts in the light of all the circumstances. The burden is on the gas company to supply whatever testimony may be necessary to enable court or board to make the requisite division. Leases bought with income, the proceeds of the sale of gas, and thus paid for in the last analysis through the contributions of consumers, ought not in fairness to be capitalized until present or imminent need for use as sources of supply shall have brought them into the base upon which profits must be earned. To capitalize them sooner is to build the rate structure of the business upon assets held in idleness to abide the uses of the future. At times the immediate purpose of buying up extensive tracts is to forestall or stifle competition that might bring the prices down. There is adequate compensation for investment so remotely beneficial when the cost of renewing fields in present operation, and thus replenishing the capital, is paid out of gross earnings as an expense of operation, with a proportionate increase of the prices to be charged for gas thereafter. . . Postponement of other profit until the stage of imminent or present use is not an act of confiscation, but a legitimate exercise of legislative judgment. Certainly that is so when the amortization fund has been computed with reasonable liberality, and is large enough to make provision for adequate reserves. If the company is not satisfied to have the depletion allowance thus applied in renewal of its life, it may divide the fund among the stockholders and wind the business up. If cannot get its capital back at the expense of the consuming public and also at the same expense provide itself with a fresh supply to keep the business going.

The Ohio Court's reduction of the "river rate" for gas purchased by the Ohio Company from the United Company was also found erroneous, on the ground that the reduction there also rested upon an exclusion of allowances for amortization and depreciation.

The remaining part of the opinion was largely devoted to a discussion of the evidence in respect of certain other allowances sought by the appellant.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BUTLER concurred in the result.

MR. JUSTICE VAN DEVENTER and MR. JUSTICE SUTHERLAND took no part in the case.

The case was argued by Mr. Edward C. Turner for the appellant and by Messrs. John L. Davies and James W. Hugman for appellees.

Federal Employers' Liability Act—Jurisdiction of State Courts Over Actions Brought Under Act—Discrimination Against Federal Rights

State courts, authorized by statute to take jurisdiction over a suit between a person, who is a nonresident, and a foreign corporation on a cause of action arising under the common law or statutes of another state, may not refuse jurisdiction over a suit between such parties on the sole ground that the cause of action arose under the Federal Employers' Liability Act. Such discrimination against an action to enforce a federal right is prohibited by the privileges and immunities clause of the Federal Constitution.

McKnett v. St. Louis & San Francisco Ry. Co., Adv. Op. Vol. 78, p. 804; Sup. Ct. Rep. Vol. 54, p. 690.

This case involved a question as to the jurisdiction of the state courts over causes of action arising under the Federal Employers' Liability Act. The petitioner, plaintiff in the trial court, brought an action in a circuit court of Alabama against the Railway Com-

pany to recover damages under the Act for an injury sustained in Tennessee. The plaintiff is a resident of Tennessee, and the Railway Company is a foreign corporation doing business in Alabama. The Railway Company pleaded in abatement that the trial court had no jurisdiction, since the cause of action arose in Tennessee, but did not arise by the common law or statutes of that State. The plea was based on an Alabama Act of 1907 providing that:

> "Whenever, either by common law or the statutes of another state, a cause of action, either upon contract or in tort, has arisen in such other state against any person or corporation, such cause of action shall be enforcible in the courts of this state, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state."

The plea was sustained on demurrer and the defendant had judgment which the Supreme Court of Alabama affirmed. On certiorari this was reversed by the Supreme Court in an opinion by MR. JUSTICE BRANDEIS.

The opinion observes that prior to the Act of 1907 the Alabama Court had held that the State courts had no jurisdiction of any suit against a foreign corporation unless the cause of action had arisen in the State; and that it had concluded that the same rule applied here, because the Act of 1907 had not enlarged the jurisdiction to include a cause of action arising under federal law.

In reversing the judgment it was noted that the circuit courts have general jurisdiction over the class of cases to which the one at bar belongs, and that if the action had been brought to recover for an injury sustained while the plaintiff was engaged in intrastate commerce the circuit court would have had jurisdiction. In view of this, refusal to take jurisdiction here was thought to be discriminatory against rights resting on federal law. As to this MR. JUSTICE BRANDEIS said:

> The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution. The privileges and immunities clause requires a state to accord to citizens of other states substantially the same right of access to its courts as it accords to its own citizens. . . The full faith and credit clause requires a state court to take jurisdiction of an action to enforce a judgment recovered in another state, although it might have refused to entertain a suit on the original cause of action as obnoxious to its public policy. . . By *Mondou* v. *New York, New Haven & Hartford R. R.*, 223 U. S. 1, an action in a Connecticut court against a domestic corporation, it was settled that a state court whose ordinary jurisdiction as prescribed by local laws is appropriate for the occasion, may not refuse to entertain suits under the Federal Employers' Liability Act.
>
> While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, . . . the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws.

The case was argued by Mr. J. K. Jackson for the petitioner and by Mr. L. V. Gardner, Jr., for the respondent.

Bankruptcy—Assignment of Wages—Effect of Discharge

An assignment of future wages, made to secure payment of a debt, is not enforceable against a debtor after he has obtained a discharge in bankruptcy relieving him from the debt secured by the assignment. To hold that such an assignment constitutes a lien on the bankrupt's earnings, which survives the discharge, would be contrary to the policy and purpose of the bankruptcy act to relieve the bankrupt from the weight of oppressive indebtedness.

Local Loan Co. v. Hunt, Adv. Op. Vol. 78, p. 792; Sup. Ct. Rep. Vol. 54, p. 695

This opinion, by MR. JUSTICE SUTHERLAND, involved the effect of a discharge in bankruptcy on an assignment of future wages which the bankrupt had made prior to the filing of the bankruptcy petition. After the discharge, the creditor brought suit in the municipal court of Chicago against the respondent's employer to enforce the assignment of wages. The respondent then instituted a proceeding in the bankruptcy court to enjoin proceedings of the petitioner for enforcement of the assignment. The bankruptcy court granted the relief sought, and the Circuit Court of Appeals affirmed. On certiorari the decree was affirmed.

The petitioner contended that the bankruptcy court had no jurisdiction to enjoin proceedings in the municipal court; that, assuming such jurisdiction, the assignment constituted an enforceable lien; and that the rule established in Illinois that such an assignment is an enforceable lien is binding on the Supreme Court.

Dealing with these contentions MR. JUSTICE SUTHERLAND first discussed the question of jurisdiction, and concluded that its existence is established on principles analogous to those on which rests the jurisdiction of courts of equity to grant relief on an ancillary bill. As to the propriety of exercising such jurisdiction the inadequacy of relief afforded by requiring the bankrupt to leave the determination of the question to the municipal court was discussed.

> The alternative of invoking the equitable jurisdiction of the bankruptcy court was for respondent to pursue an obviously long and expensive course of litigation, beginning with an intervention in a municipal court and followed by successive appeals through the state intermediate and ultimate courts of appeal, before reaching a court whose judgment upon the merits of the question had not been predetermined. The amount in suit is small, and, as pointed out by Judge Parker in *Seaboard Small Loan Corporation v. Ottinger*, (50 Fed. (2d) 856), such a remedy is entirely inadequate because of the wholly disproportionate trouble, embarrassment, expense, and possible loss of employment which it involves.

As to the question of substantive law the Court concluded that the debt secured by the assignment does not survive the discharge in order to create a lien on future wages. Decisions of state courts were found not controlling or binding on the question, in view of the purpose of the bankruptcy act. As to this MR. JUSTICE SUTHERLAND observed:

> One of the primary purposes of the bankruptcy act is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." . . This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns *at the time of bankruptcy*, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. . . The various provisions of the bankruptcy act were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act. Local rules subversive of that result cannot be accepted as controlling the action of a federal court.
>
> When a person assigns future wages, he, in effect, pledges his future earning power. The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as

much if not more than it is a property right. To preserve its free exercise is of the utmost importance, not only because it is a fundamental private necessity, but because it is a matter of great public concern. From the viewpoint of the wage earner there is little difference between not earning at all and earning wholly for a creditor. Pauperism may be the necessary result of either. The amount of the indebtedness, or the proportion of wages assigned, may here be small, but the principle, once established, will equally apply where both are very great. The new opportunity in life and the clear field for future effort, which it is the purpose of the bankruptcy act to afford the emancipated debtor, would be of little value to the wage earner if he were obliged to face the necessity of devoting the whole or a considerable portion of his earnings for an indefinite time in the future to the payment of indebtedness incurred prior to his bankruptcy. Confining our determination to the case in hand, and leaving prospective liens upon other forms of acquisitions to be dealt with as they may arise, we reject the Illinois decisions as to the effect of an assignment of wages earned after bankruptcy as being destructive of the purpose and spirit of the bankruptcy act.

The case was argued by Mr. Frederic Burnham for the petitioner, and by Mr. Lloyd A. Faxon for the respondent.

Taxation—Federal Income Tax—Deduction of Losses of Predecessor Corporation

Under Section 204 (b) of the Revenue Act of 1921 a successor corporation is not entitled to have its taxable income determined by deducting from its net income, losses sustained by its corporate predecessor, where all the assets and business of the predecessor are taken over by the successor which was organized with the same capital structure for the purpose of taking over such assets and business.

For purposes of the Act the general rule in respect of the separate entities of a corporation and its stockholders is applicable, and the successor corporation is to be treated as a separate entity, despite the fact the stockholders and creditors of both corporations are substantially identical.

New Colonial Ice Co., Inc. v. Helvering, Adv. Op. Vol. 78, p. 971; Sup. Ct. Rep. Vol. 54, p. 788.

This opinion, delivered by MR. JUSTICE VAN DEVANTER, dealt with a question as to the deduction of certain losses sustained by the corporate predecessor of the petitioner in determining the petitioner's income taxes for 1922 and 1923. The issue was stated in the opinion in the following language:

> The question presented is—where all the assets and business of an older corporation are taken over by a new corporation, specially organized for the purpose and having substantially the same capital structure, in exchange for a portion of its stock, which is distributed by the older corporation among the latter's stockholders share for share, thereby retiring the old shares, is the new corporation entitled, notwithstanding the change in corporate identity and ownership, to have its taxable income for the succeeding period computed and determined by deducting from its net income for that period the net losses sustained by the older corporation in the preceding period?

Disposition of the question turns on the construction of § 204 (b) of the Revenue Act of 1921, which provides that:

> "If for any taxable year beginning after December 31, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount thereof shall be deducted from the net income of the taxpayer for the succeeding taxable year; and if such net loss is in excess of the net income for such succeeding taxable year, the amount of such excess shall be allowed as a deduction in computing the net income for the next succeeding taxable year; the deduction in all cases to be made under regulations prescribed by the Commissioner with the approval of the Secretary."

The petitioner is the successor of a corporation organized under the laws of New York to engage in the ice business. The old corporation had not fully completed equipping the ice plant when it became financially embarrassed. A creditors' committee and a stockholders' committee were organized, and on investigation it was found that much stock had been issued of which there was no record and for which no consideration had been paid. An agreement followed, pursuant to which the petitioner was organized and took over the business on April 13, 1922. The corporate existence of the predecessor continued through 1922 and 1923.

The old corporation sustained a net loss of $36,093.19 during 1921, and a net loss of $10,338.90 during 1922 prior to the transfer. The new corporation realized net income of $48,763.43 during 1922, and of $56,242.55 during 1923. The petitioner asserted the right to deduct the losses of the old corporation.

It asserted that the continuity of the business was not broken by the transfer, and that the ultimate parties in interest, stockholders and creditors, remained substantially the same after the transfer of the business.

The Board of Tax Appeals and the Circuit Court of Appeals both ruled against the petitioner's claim. On certiorari the Supreme Court affirmed the ruling. In the opinion of the Court, Mr. Justice Van Devanter pointed out that the power to tax the income of the new corporation is plain; that the statutes have disclosed a general purpose of confining allowable losses to the taxpayers who have sustained them; and that the taxpayer seeking a deduction must be able to show that he is within the terms of an applicable statutory provision allowing the deduction. An examination of the statute was thought, however, to afford no support for the deduction claimed. Referring to § 204 (b) the Court said:

> It brings into the statutes an exceptional provision declaring that where for one year "any taxpayer has sustained a net loss" the same shall be deducted from the net income of "the taxpayer" for the succeeding taxable year; and, if such loss be in excess of the income for that year, the excess shall be deducted from the net income for the next succeeding taxable year. Its words are plain and free from ambiguity. Taken according to their natural import they mean that the taxpayer who sustained the loss is the one to whom the deduction shall be allowed. Had there been a purpose to depart from the general policy in that regard, and to make the right to the deduction transferable or available to others than the taxpayer who sustained the loss, it is but reasonable to believe that purpose would have been clearly expressed. And, as the section contains nothing which even approaches such an expression, it must be taken as not intended to make such a departure.

The Court discussed also the contention that "for all practical purposes the new corporation was the same entity as the old one and therefore the same taxpayer." In answer to this contention the Court, though recognizing that in exceptional circumstances courts may disregard the separate entities of a corporation and its stockholders, expressed the view that the case falls within the general rule.

> As a general rule a corporation and its stockholders are deemed separate entities and this is true in respect of tax problems. Of course, the rule is subject to the qualification that the separate identity may be disregarded in exceptional situations where it otherwise would present an obstacle to the due protection or enforcement of public or private rights. But in this case we find no such exceptional situation—nothing taking it out of the general rule. On the contrary, we think it a typical case for the application of that rule.

The case was argued by Mr. Joseph Sterling for the petitioner and by Mr. H. Brian Holland for the respondent.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

WITNESSES in Court. By Henry W. Taft. 1934. New York: The Macmillan Company. Pp. xiv, 98. Mr. Taft, after more than fifty years of urban and urbane trial practice, has written a most delightful homily on the attitude of judges and lawyers toward witnesses who have had the misfortune to be called into court to testify. He describes how the rank and file of the lawyers brow-beat witnesses, denounce them as having committed deliberate perjury, accuse them of corrupt motives, and attempt to intimidate them. Mr. Taft insists "the more ancient the abuse the more sacred it is." But he maintains that theoretically a lawsuit should be an inquiry for the discovery of truth and not a sporting event where the counsel take the place of gladiators. Hence he would do away with most of the rules of evidence, limiting exclusions to "(1) those relating to materiality, (2) those excluding on direct examination questions so leading as to suggest the answer the examiner desires, and (3) those excluding testimony where evidence of a higher order of competency is available."

It would be shocking to veteran practitioners to hear and see witnesses in a court room at their ease on both direct and cross examination, the court trying to find the facts of the case uninfluenced and undeterred by archaic principles, members of our profession talking in a conversational tone of voice, not barking or gesticulating, or sneering, or insulting witnesses who come into court without any fault of their own and whose only sin was to have knowledge of the facts in controversy. By the time-honored weapon of lawyers, cross-examination, the author effectually disposes of the tests brought forth by the New Psychology school to measure the ability of the witness to observe.

Mr. Taft is very fortunate, after having spent a long and busy life at the bar, to be thoughtful, kindly, hopeful, and tolerant to progress. The whole work is rather an appeal to lawyers and judges alike to treat witnesses more considerately and thus attain what they desire: for the lawyer the winning of his case, and for the judge the better conduct of the lawsuit. The treatise should not be allowed to get into the hands of laymen, for it would tend to diminish the luster of our profession. Eighty-five per cent of the judges and ninety-five per cent of the trial lawyers should read it and examine souls.

"Take the Witness!": The Amazing Career of Earl Rogers, Criminal Lawyer. By Alfred Cohn and Joe Chisholm. New York: Frederick A. Stokes Company. 1934. Pp. xii, 315.

The authors, who claim to have been friends of Rogers in his lifetime, by writing this long and glamorous account of an advocate of obstructed justice throughout a stormy career at the bar, have done his memory a great disservice. His daughter writes in the Foreword:

> "When I was a little girl, we used to go out to the ball games and when a player got mad at the umpire and started after him with a bat, the bleachers would rise and shout, 'Go ahead and kill him, we'll get Earl Rogers to defend you.'
>
> "And Dad would chuckle and roll himself a cigarette with one elegant gesture and beam, for he loved crowds."

It is a sordid story of great audacity, surprise witnesses, dissolute drunkenness, contempt not only of the court but of the opposing counsel, the facts of the case, and all questions of right and wrong. In his time he defended great and small malefactors with what his biographers declared to be almost complete success. They infer that it was taken for granted that all of his clients came to him stained with guilt and, under his hypnotic influence, were vindicated. It is the criminal lawyer at his worst that they hold up as a model. His daughter says again in the Foreword—"he never in his life bribed a juror or corrupted a witness, *I know.*" That is the way for a daughter to talk, but her words fail to carry conviction.

In Quest of Justice: By Claud Mullins. 1933. London: John Murray. Pp. xvi, 448. The author, who since 1931 has been a metropolitan police magistrate, is an eight-cylinder law reformer. He has written a very readable book for Englishmen especially, in which he criticises abuses in the administration of justice in his home country as "the neglected growth of time and accident." If he is right twenty per cent. of the time there is another dent in the "perfection of reason" dogma. His principal charges are that the law is increasingly uncertain; there is an excessive output of decisions; the machinery of the law is clumsy; the charges of the solicitor and the barrister are outrageous; many trials are too prolonged; appeals are ruinous on account of the costs; and the legal vacations are altogether too long. The consequences are the new bureaucratic justice with special tribunals, which exclude the courts. The instances that he tells of very high costs are shocking. The right triumphs but the successful party becomes bankrupt.

The author is comparatively a young man. Here's hoping that he has the same spiritual rewards in fame that followed Jeremy Bentham and Sir Samuel Romilly.

MITCHELL D. FOLLANSBEE.

Chicago.

An Introduction to Some Problems of Australian Federalism: By Kenneth O. Warner. 1933. Seattle, Washington: University of Washington Press. Pp xii, 312. Mr. Warner, who is Assistant Professor of History and Political Science in the University of Arkansas, has given us a very careful and thoughtful study

of the relationship between the Australian States and the Commonwealth. With sure insight into the character of these relations he has concentrated special attention on finance. In point of fact events which have in part transpired since he wrote have made it plain that the whole character of Australian federation may vitally be affected by the agreement between States and Commonwealth on the national debt, and by the amendment to the constitution which was duly enacted to give effect to the agreement. The States, as the proceedings arising out of the default of New South Wales under Mr. Lang conclusively proved, had not realized how far-reaching was the power which they had conferred on the Commonwealth, extending even to the right to appropriate the revenues of the State to Commonwealth purposes. Simultaneously the powers of the Loan Council, of which an excellent sketch is given in chap. ix, have proved to be of the greatest importance, since State and Commonwealth policy alike must necessarily be deeply affected by the extent to which the power to borrow is conceded. It is significant that the States are proving restive under the constraint thus imposed. The comparative success of Labor in the Tasmanian election of June, 1934 is ascribed by the party to revolt against the financial coercion of the State, and the financial agreement is one of the causes alleged by Western Australia in her case for secession which has now reached the stage of approval by both houses of the Australian Parliament for submission to the Parliament of the United Kingdom. Mr. Warner writes wisely also on trade issues; how unsatisfactory the position is may be seen from the fact that the Attorney General of Victoria has joined the ranks of those who demand that the Privy Council should be asked to clear up the meaning of the principle of freedom of trade between the States enacted in s. 92 of the Constitution while South Australia is in conflict with the Commonwealth on the difficult question of the regulation of butter export. It is one of the many points in which the working of the constitution has disappointed its creators that the Inter-State Commission failed entirely to function on the lines intended (pp. 101-13).

In the main Mr. Warner is a sound guide, but a few errors may be noted. It is impossible to accept the suggestion (p. 15) that the link between Australia and the Crown could be severed by Commonwealth action alone; no Australian statesman or constitutional lawyer makes any such claim, which the Statute of Westminister, 1931, by implication clearly negatives. The State governors are not denied the power of pardon (p. 35); as criminal law is a State affair, the power is essentially theirs, and the power of the Governor General is restricted to offenses against the laws of the Commonwealth itself. Sir P. Game's dismissal of Mr. Lang (p. 304) was not upheld by the Privy Council, for its legality was never in question; what the Privy Council had to determine was the effect of an Act of New South Wales forbidding the abolition of the Legislative Council of the State without a referendum. Nor was the Financial Emergency (State Legislation) Act of May, 1932 (p. 307) put into operation. It was planned to meet a bill promoted in the New South Wales Parliament by Mr. Lang, which on his dismissal never became law.

A. BERRIEDALE KEITH.
University of Edinburgh.

Legislatures and Legislative Problems. Edited by Thomas H. Reed. 1933. Chicago: University of Chicago Press. Pp. x, 296. *Legislatures and Legislative Problems* is a group of radio talks sponsored by the Committee on Civic Education by Radio of the National Advisory Council on Radio in Education, and the American Political Science Association. The critic must take into consideration the limitations involved in the radio method of adult education, but with these limitations in mind the reviewer believes this to be an excellent attempt to furnish a background for the understanding of current problems, couched in a popular form. A radio talk cannot be an elaborate argument, both because of the limitation of time, and because a radio audience likes to have its facts clearly stated and the opinions it listens to definite and without "saving clauses." The make-up of the Committee and the sponsorship of the American Political Science Association are a guarantee for the competency of the speakers, who have done an excellent piece of work. The talks are well organized and contain material of value to students of government. The book is worth the study of anyone preparing radio talks on any subject, and therefore a contribution to the technique of this very important means of adult education.

Legislation—General Assembly 1933. Prepared by Henry Brandis, Jr., Vol. I, No. 3, POPULAR GOVERNMENT. 1934. Chapel Hill, N. C.: The Institute of Government. Pp. xiv, 263. This monograph is written to interpret the changes made in the statute law of the State of North Carolina by the Legislature of 1933, "and to present some of the problems which result from those changes." The writer believed that tax and financial legislation and acts affecting the public schools were more interesting to the public than others, and therefore placed his principal emphasis upon them. The work is written primarily for the layman, but, as the author well says, it will be useful to the lawyer as a handbook of statutory changes "with some treatment of the background." The author expresses the hope that the whole staff of the Institute will in future years share in the preparation of the digest of the work of each session of the legislature and that it will be, therefore, possible to extend the background study as well as the number of subjects treated.

The reviewer congratulates the Institute on its initiative. Such studies as this, prepared soon after the close of a session, when interest is still active, will be of immediate value as a basis for appraisal of the product of the session by editors, officers of merchants' or farmers' associations, labor unions and civic groups, and an appraisal based not only on the words of a single statute, but on an understanding of its place in the work of the session, and in the preceding law. The editor points out that a statute never stands alone, but is a step in a process of attaining some goal, social, political, economic, and can be properly understood only if it is shown in some relation to the past and present.

The statutes reviewed show the great difficulties of taxation in a period of decreasing property values and a stable or perhaps increasing local bonded debt. The review indicates in an interesting way the action of the legislature in respect to local taxpayers and their debts, which include a statute allowing the compromise of debts of local governments (p. 20). The quandary of the taxpayer is evidenced in the legislation affecting delinquent taxes. The action of the General Assembly on this subject is prefaced by an interesting statement of the procedure and the situation at the

time the Assembly convened. Without this introduction the importance of the legislation digested would not be apparent.

The section on state economy and finance brings together the decisions of the legislature in respect to both the expense and the revenue side of the state finance, and indicates that the depression is at least having the effect in North Carolina of requiring the state's public men to examine carefully the machinery of government, in the hope of economy without loss of efficiency.

The reviewer ventures to express the hope that more space will be given hereafter to the legislative process. The description of the haphazard amendment of a bill during passage, without any control by a responsible leader, is eloquent of a condition which opens the way to confused laws, and, perhaps worse, allows designing men who know exactly what they want to get just that in the confusion. Steadily pointing out such procedure is the best way of causing its correction.

It would be a real service to an understanding of American legislation in general, if socially-minded persons in other states would set up a similar reasoned review of the activities of each session of their legislature.

J. P. CHAMBERLAIN.

Columbia University.

International Adjudications: Ancient and Modern History and Documents. Vols. V and VI, edited by John Bassett Moore. 1933. New York: Oxford University Press. Pp. xv, 502; xxv, 418. These are further volumes of Dr. Moore's admirable collection of documents and materials on international adjudications. Volume V deals with the Spanish spoliations of 1795, the French indemnity of 1803, and the French indemnity of 1831, and as they cover the period of the Napoleonic wars and the war of 1812 they are of unusual interest. During that period the vessels and commerce of the United States suffered severely as a result of belligerent activities and this whole period contributed materially to the development of international law relating to rights of neutrals, to contraband, to "boycotts" and embargoes, which were responsible for the famous British Orders-in-Council and the Berlin and Milan Decrees. It also treats of the Louisiana cession of 1803 and of the adjustment of claims arising out of this cession. One of the most interesting sections is the appendix containing the exposition of Mr. Kane (who was one of the United States commissioners) of the Commission's jurisprudence.

Volume VI is of particular interest to Canadian students, because it deals with the title to islands in the Bay of Fundy and Passamaquoddy Bay, as stipulated in the Treaty of Ghent. As the earlier volumes in this series have already been reviewed, there is little one can add save to express one's gratitude and appreciation to Dr. Moore for the work that he has done for all students in this field. This is particularly true because he makes available in this series a great deal of material that is not otherwise accessible to the majority of students, and his editorial notes, which accompany the documents themselves, add greatly to the value of the present volumes.

NORMAN MACKENZIE.

University of Toronto.

Lincoln: A Psycho-Biography. By L. Pierce Clark. New York and London: Charles Scribner's Sons. 1933. Pp. xiv, 570. I suppose that every busy professional man has heard vaguely of psycho-analysis, and wondered how he could get some idea of what the psychoanalysts were talking about. Pressed by work, and possibly alienated by the more formal treatises, he has perhaps wanted to find a book that would be informing and entertaining. This study of Abraham Lincoln is in many respects just the sort of reading to be recommended to the serious non-specialist. The man who wrote it was a thoroughly competent practitioner of psychoanalysis in New York prior to his recent death, and his hobby through the years was to collect biographical data about Lincoln, in the hope of using his special knowledge to illuminate the unconscious components in Lincoln's development.

The book is substantial and careful, though the style is undistinguished. When Dr. Clark uses a technical term, he tries to define it carefully before showing why he is justified in using it to refer to Lincoln. He seeks to explain the source of Lincoln's depressions, his immense human sympathy, and his final capacity to rise to daring statesmanship. No doubt Lincoln's fellow-lawyers, in the course of reading this volume, will catch some clues to forms of personality often met with among professional colleagues, judges, and clients.

HAROLD D. LASSWELL.

The University of Chicago.

The Legal Effect of Ante-Nuptial Promises in Mixed Marriages. By Robert J. White. 1932. Philadelphia: The Dolphin Press.—This small volume of 80 pages has been written as a result of a decree issued by the papal office in January, 1932, by which all bishops are obliged in conscience never to grant the customary dispensation "unless the couple to be married first give the guarantees, the faithful fulfillment of which no one can hinder, not even by the force of the civil laws. . . . otherwise the dispensation itself shall be wholly null and void" (page 1). This decree, according to the construction placed on it by some canonists, makes it highly desirable if not indispensable to conform the civil law of this country on the subject to this Catholic perception. To this task the author devotes his legal-ecclesiastical talents.

So far as the English and American precedents are concerned he frankly admits that they are against him one and all. His attempt is to show that their reasoning is fallacious and that sound justice demands that future decisions should properly appraise the rights of personality of the Catholic party to such promises and that injunctive relief be granted accordingly. If his contention were established it might act as a boomerang. For in cases where the non-Catholic party is the stronger the promise is not infrequently exacted from the Catholic party.

It is not intended to deny value to this little book. It places at the command of the legal profession all the cases on the subject. It cannot possibly mislead either judges or lawyers. A reading of the book will convince any discriminating lawyer (regardless of his religious belief) that the author has undertaken an impossible task. The obligation arising from the promise is a moral one from the viewpoint of the favored church and is immoral from the viewpoint of the church (if any) discriminated against, and in either view is not entitled to be enforced by injunction. The book is recommended to the readers of this Journal who are interested in its subject matter. It is not recommended

to legal laymen, such as priests and prospective brides and bridegrooms, because they may be misled by it.

The author is not merely a priest but is a graduate of the Harvard Law School and practiced law in Massachusetts for eight years before deciding to become a priest. He is at the present time the national chaplain of the American Legion.

CARL ZOLLMANN.
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Lynching and the Law. By James Harmon Chadbourn, Assistant Professor of Law, University of North Carolina. 1933. XI-221 pp. Chapel Hill: The University of North Carolina Press.—Over four years ago the Southern Commission on the Study of Lynching began an exhaustive study of the social problems presented by the tragic evils of mob-violence and lynching. In this work it was aided by the Commission on Interracial Cooperation, and research was undertaken through the agency of the University of North Carolina. One outstanding result of this effort was the publication of Arthur F. Raper's *The Tragedy of Lynching,* a detailed study of the lynchings of 1930, in which the circumstances of each outrage were analyzed in reference to the social, economic, educational and religious status of the communities involved. The present volume, which worthily supplements its predecessor, embodies the results of an inquiry to what extent the processes of law, the actual legislation and the judicial and administrative procedure of the various states, were responsible for these evils, and the practical measures of law reform which were, or can be, brought into effect.

It is indicative of the spirit of our changing social era that no considerations of local loyalties restrain the author in the dark picture he paints of the communities in which flourish the evil weeds of mob-violence and race warfare. He characterizes the typical lynching community as a rural Southern county characterized in general by social and economic decadence. For example, it is below the state average in per capita tax valuation, bank deposits, income from farm and factory, income tax returns, and ownership of automobiles. Educational facilities are also below the average." He adds that "there is generally prevalent a supposed necessity for protecting white women against sex crimes by the Negro. All these, plus emotional and recreational starvation and a fear of economic domination by enterprising Negroes, create the complex of 'keeping the nigger in his place.' Periodic lynchings are the result." (p. 4.)

Given such a background we are not surprised to find a general and deplorable inefficiency in the administration of criminal justice: in fact, so constant is the manifestation of this breakdown of legal agencies that lynching is sometimes interpreted, and sought to be palliated, as a protest against it. A prominent Texas attorney, in a letter to the author, said: "As a matter of fact, so long as the present condition of stagnation or breakdown in the proper administration of our laws continues, I am frank to say that in my opinion all the model statutes on lynching that can be passed will be unavailing and futile. So long as we continue to elect judges on their hand-shaking abilities rather than on their knowledge of the law or their proficiency in the application thereof, and so long as our courts have little or no control over the trial as is the case in Texas, and so long as our statutes permit and encourage 'astute' criminal lawyers to defeat the ends of justice by the use of pettifogging tactics, and so long as our courts wink at the use of perjured testimony, just so long will it be useless to try to discourage lynching" (pp. 5-6).

There, at all events, is an opinion expressed with characteristic Texan vigour; but it is only an individual opinion, and replies to a questionnaire submitted by Professor Chadbourn to a large number of Southern lawyers and social workers are far from indicating unanimity on the subject. The question was put: "Is it your observation or opinion that the administration of criminal justice in your state encourages lynching by failing in sure and swift punishment of the crimes which incite it?" Of 204 answers received, 72 were affirmative, 106 were negative, while 26 were doubtful. But the lawyer, trained and practicing under a reformed and modern criminal procedure, who examines the record of criminal trials in the "lynching belt," will be driven to ask himself whether the inflexible formality of indictments, the multiplicity of purely technical grounds for error or reversal, and the relative helplessness of the judge to act as anything more than an umpire, are not evils possible of eradication, and whether reform in this direction is not a first and necessary step before much improvement can be hoped for.

It is merely trite to point out that the local police and administrative system stands in need of a drastic and thorough overhauling. Frederick William Maitland told us that "the whole history of English justice and police might be brought under this rubric, the decline and fall of the sheriff." Professor Chadbourn's report leads to the irresistible conclusion that, so far as the South is concerned, the decline and fall of the sheriff (though hardly in Maitland's sense) has been disastrous. Cases are multiplied to show that lynching outrages have frequently occurred purely for lack of a modicum of firmness and ordinary courage on the part of the sheriff and his officers. Nine states make provisions for the removal of peace officers who fail to prevent lynchings. Yet it appears that no cases have occurred in which a peace officer has been convicted and ousted because of a lynching; the very few cases where removal from office has been effected have been the result of action by the Governor or by the Supreme Court (p. 65). Yet figures show that such removal has had, indirectly at least, a beneficial result by making it obvious that in no circumstances ought it to be a sufficient excuse for a peace officer to say: "Do you think I am going to risk my life protecting a nigger?"

Replies to questionnaires indicated a widespread belief that many lynchings were averted by a change of venue. But Professor Chadbourn points out that rules of court or code provisions to this effect will probably have to be made mandatory. In some states such provisions have remained almost completely nugatory.

Various devices designed to facilitate the apprehension and punishment of lynchers are subjected by Professor Chadbourn to discriminating and critical analysis: among these may be mentioned (1) prosecution on information in lieu of indictment; (2) prosecution by Attorney-General in lieu of local prosecuting officers: (3) provisions for offering rewards and hiring detectives; (4) disqualifying jurors who have expressed pro-lynching sentiments; (5) withholding the privilege against self-incrimination from witnesses in lynching trials, but granting them immunity from prosecution; (6) providing special pay for the prosecutor in lynching investigation and trial.

The consideration of these suggestions, and the record of their comparative failure, suggest the impera-

tive necessity for reform in the state criminal codes and their procedural regulations. To this end Professor Chadbourn offers many practical and illuminating suggestions and, in particular, submits, in an appendix (pp. 134-8), a proposed Model Act, the main provisions of which may be summarized as follows:

(a) Assessment of penalties payable to the injured person or his estate, and recoverable from the county in which the outrage occurs;

(b) Recovery over by the county of such penalties as against any participants in the mob-outrage;

(c) Removal of sheriff or other peace-officer for cause;

(d) Ineligibility of ousted sheriff or other peace-officer for further public office in the state;

(e) Prosecution to be by indictment or information or upon inquisition by jurors specially selected in a panel drawn up by the justices of the appellate court;

(f) Powers of governor to dispatch militia in aid of local officers;

(g) Provisions for change of venue;

(h) Amendment of rules of evidence as to self-crimination and hearsay;

(i) Powers to issue restraining orders or injunctions to prevent any lynching or mob-violence.

A complete schedule of all existing legislation upon the subject is given in Appendix C; and the vexed questions of federal anti-lynching measures, and of the Dyer Bill, are briefly but competently dealt with.

This courageously outspoken and extremely readable volume is a noteworthy addition to the literature upon one of our most distressing social problems.

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Leading Articles in Current Magazines

Harvard Law Review, May (Cambridge, Mass.)—A Form of Depression Finance—Corporations Pledging Their Own Bonds, by Sinclair Hatch; Multiple Causation and Damage, by Robert J. Peaslee; Quasi-Contractual Liability of Municipal Corporations, by C. W. Tooke.

Harvard Law Review, June (Cambridge, Mass.)—Directors Who Do Not Direct, by William O. Douglas; That Commerce Which Concerns More States Than One, by Robert L. Stern; The Historic Function of the American Law Institute: Restatement as Transitional to Codification, by Mitchell Franklin.

Southern California Law Review, March (Los Angeles, Calif.)—The Mexican Labor Law, by Joseph M. Cormack and Frederick F. Barker; Municipal Liability in Tort in California, Part IV by Leon Thomas David.

Virginia Law Review, June (University, Va.)—Duty of Directors and Others as Prescribed by Section 11 of the Securities Act of 1933, by Horace A. Teass; Stare Decisis and the Legal Tender Cases, by Leon Sachs.

Boston University Law Review, April (Boston, Mass.)—Two Aspects of NIRA—Price Fixing and Labor, by Aaron W. Warner and Harry N. Guterman; Is There a National Police Power? If So, What Is Its Relation to the Recent Federal Statutes Affecting Industry and Trade Generally? by Harrison J. Barrett; Melvin M. Bigelow—An Intimate Portrait, by George R. Farnum; The Bacon Lectures, by Daniel L. Marsh; The Blame for Crime, by Henry T. Lummus; Conflicts of Law—A Theoretical Approach, by Léa Meriggi; Liability of a Life Insurance Company to Apply Dividends to Keep a Policy in Force After Default in Payment of Premium, by Leon A. Hamilton.

Georgetown Law Journal, May (Washington, D. C.)—George E. Hamilton, by Hon. Pierce Butler; Contributory Negligence by Charles L. B. Lowndes; Due Process and the Supreme Court—A Revaluation, by Robert A. Maurer; Presumption Versus Proof in Automobile Highway Accidents, by Hugh J. Fegan.

Illinois Law Review, June (Chicago)—The Problem of Reorganizing "Solvent" Corporations, by Minier Sargent; Samuel Zelkowich; Recent Developments in Income Tax Avoidance, by George T. Altman; Declaratory Judgments in Public Law, by Albert Russell Ellingwood.

Columbia Law Review, April (New York City)—Warranties in Insurance Law, by Edwin W. Patterson; A Proposed Uniform Act Making Investment Instruments Negotiable, by Roscoe T. Steffen.

Michigan State Bar Journal, May (Ann Arbor)—The Forty-fourth Annual Meeting of the Michigan State Bar Association; Michigan Bar Examination Analysis, by George E. Brand; Banking Reform by Statute, by Robert G. Rodkey; Process in Actions Against Non-Residents Doing Business Within a State, by Maurice S. Culp; Federal Housing and Home Loan Legislation and Its Consequences, by Ernest M. Fisher.

Oregon Law Review, April (Eugene, Ore.)—The Compensation of Promoters, by W. J. Brockelbank; Intentional Invasion of Interest of Personality, by Charles E. Carpenter.

St. Louis Law Review, April (St. Louis, Mo.)—The Scope of Judicial Independence of the Legislature in Matters of Procedure and Control of the Bar, by Louis Shanfeld; Anderson's Case—An Early Extradition Controversy, by the Hon. William Renwick Riddell; The Dartmouth College Case—Then and Now, by Hugh Evander Willis.

Tennessee Law Review, June (Jackson, Tenn.)—The Work of the American Law Institute, by Herbert F. Goodrich; The Availability of a Sales Tax in Tennessee, by M. P. O'Connor; The Judge Advocate General's Department of the Army, by Edgar H. Snodgrass; Big Business and the Bar, by Henry A. Shinn.

Wisconsin Law Review, April (Madison, Wis.)—Power to Integrate the Wisconsin Bar by Court Order, by Maxwell H. Herriott; Some Problems of Evidence Suggested by Recent Wisconsin Decisions, by Alfred T. Gausewitz; Contracts to Devise and Bequeath, by Leo H. Hirsch, Jr.

St. John's Law Review, May (Brooklyn, N. Y.)—The Proposed Civil Practice Law and Practice Rules—A Comment, by Louis Prashker; Surviving Spouses in New York, by William J. O'Shea, Jr.; The Admissibility of Declarations of the Assured in Life Insurance Litigation, by George D. Finale; The Iso-Agglutination Test as Evidence in Judicial Proceedings in German Courts to Determine Parenthood, by Willy Schumacher; "Value"—A Reply, by Frederick A. Whitney.

Washington Law Review, April (Seattle, Wash.)—The New Washington Business Corporation Act, by Leslie J. Ayer; Accord and Satisfaction in Washington, by Harold Shepherd; Warren Shattuck; The American Law Institute's Restatement of the Law of Contracts With Annotations to the Washington Decisions, by Harvey Lantz.

United States Law Review, May (New York City)—Federal Taxation Affecting State Instrumentalities, by Sveinbjorn Johnson.

California Law Review, July (Berkeley, Cal.)—Those Protective Trusts which are miscalled "Spendthrift Trusts" re-examined, by George P. Costigan, Jr.; Recent Changes in the Bank and Corporation Franchise Tax Act (continued), by Roger J. Traynor and Frank M. Keesling; Admiralty Jurisdiction and Limitation of Liability in Single Claim Cases, by John C. McHose.

St. Louis Law Review, June (St. Louis, Mo.)—The Problem of Apparently Unguided Administrative Discretion, by Lewis Allen Sigler.

Michigan Law Review, June (Ann Arbor, Mich.)—The Securities Exchange Act of 1934, by John E. Tracy and Alfred Brunson MacChesney; Effect of Insolvency Proceedings on Creditor's Right to Interest, by Fred T. Hanson; The Varying Meaning and Legal Effect of the word "Void," by Abraham J. Levin; The Grant of Rule-Making Power to the Supreme Court of the United States, by Edson R. Sunderland.

DEPARTMENT OF CURRENT LEGISLATION

Federal Criminal Statutes, 1934

By J. P. Chamberlain

THE 73rd Congress has taken very seriously the demand that has for some years been made of committees of Congress, that the Federal Government take a share in the suppression of common law crimes through the use of the power over interstate and foreign commerce. Congress has long used the commerce power to regulate transactions which were generally considered as contrary to the public welfare, as in the case of lotteries[1] and white slave traffic.[2] It has also prohibited the use of the channels of interstate commerce to send intoxicating liquor to a state in which its use was forbidden.[3] The use of the federal power was based on the theory that it was only by the use of both federal and state power that the evil complained of could be regulated in view of the ease of distribution through facilities of interstate commerce.

The entrance of Congress through the interstate commerce power into the campaign against the common law criminal is recent. The demand for it is based on the convenience and speed of the present means of transportation and of the organization in a business-like way of the traffic in goods feloniously acquired by groups of persons who are aided in their transactions by the existence of various state jurisdictions. The organized gang may feloniously get possession of goods in New York, send them to a neighboring state for sale to a receiver of stolen goods, known as a fence, who may ship them on to a third state, perhaps on the other side of the Continent, where they will be sold at retail, and the transaction finally concluded. Modern police organizations are coping not alone with individual criminals but have to deal with the much more difficult problem of intelligently directed and organized companies of malefactors. Their production of stolen goods, however, is of little value unless they can be sure of a convenient market, and this the fence supplies with his means of receiving the goods, holding them for a convenient period, and then distributing them through other channels. A well established system of fences is vital to organized theft, and it is considered by important groups of merchants that the existence of the fence in a state different from that in which the goods are taken is an aid to the continuance of the business of misappropriating other people's property, notably jewelry, furs and silks.

Congress made its original essay in putting the federal power behind the protection of property in the Dyer Act which applied only to motor vehicles.[4] The Act was passed in 1919 and has had a favorable reception by the courts. The Act punishes the transportation in interstate or foreign commerce of motor vehicles by persons who knew they were stolen, and goes a step further, punishing anyone who receives, sells or disposes of any motor vehicle "moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen." Punishment is facilitated by permitting a violator of the act to be punished in any district in or/through which the motor vehicle is transported or removed. The Supreme Court, taking note of the facts, says:

> "Elaborately organized conspiracies for the theft of automobiles and the spiriting them away into some other state and their sale or other disposition far away from the owner and his neighborhood have roused Congress to devise some method for defeating the success of these widely spread schemes of larceny. The quick passage of the machines into another state helps to conceal the trail of the thieves, gets the stolen propery ino another police jurisdiction, and facilitates the finding of a safer place in which to dispose of the booty at a good price. This is a gross misuse of interstate commerce."[5]

It, therefore, held that transportation and concealment of a stolen automobile, with knowledge of the theft, could be punished in a federal court under this Act.

The 73rd Congress applied the principle of the Dyer Act to securities, moneys, goods, wares or merchandise, and made it a crime to transport or cause to be transported these articles in interstate commerce, or to receive, conceal, store, barter, sell or dispose of any of these articles "which, while moving in or constituting a part of interstate or foreign commerce, has been solen or taken feloniously by fraud or with intent to steal or purloin, knowing the same to have been stolen or taken."[6]

Indicating that its action was intended against organized groups, and in order to prevent the federal courts being overloaded with minor cases, the Act applies only to articles of a value of $5000 or over. Congress added the prohibition of pledging or accepting any such goods as security for a loan, and for this purpose set the value at only $500. The crime may lead to serious consequences as the punishment may be a fine up to $10,000 or imprisonment for not more than ten years, or both. There is no minimum. As in the Dyer Act, the court of any district into or through which the articles were transported or removed may have jurisdiction.

In sustaining the Dyer Act, the Supreme Court made it clear that there could be no objection to the new statute so far as it applies to the transportation or receiving of stolen goods. If this be so, it would seem to follow that the sale of such goods in an original package could be punished by act of the national legislature and thus the fence will be placed under the ban of the federal law. The federal government, it would seem, may go even fur-

1. Champion v. Ames, 188 U. S. 321 (1903).
2. Caminetti v. United States, 242 U. S. 470 (1917).
3. Clark Distilling Co. v. Western Maryland R. Co., 242 U. S. 311 (1917).
4. U. S. Co., Title 18, §408.
5. Brooks v. United States, 267 U. S. 432 (1925); see note to Whitaker v. Hitt, 27 A. L. R. 956.
6. Public No. 246.

ther and follow the goods into the hands of a person who receives them after the goods have come to rest in a warehouse in the state of destination, the package has been broken, and the stolen goods sold to him. For example, suppose a package of stolen furs has passed by interstate commerce into a state other than that in which it was feloniously acquired, is there opened and the furs distributed among a number of individual purchasers who in their turn dispose of them to ultimate users. Could it not be claimed that the federal government could follow the goods even after the original package had been opened, and punish the person who received them with guilty knowledge that they had been transported in interstate commerce? The power of Congress under its control over interstate and foreign commerce permits it to accomplish the object of police legislation of this character.[7]

The strong feeling against kidnapping led the Congress, by Public No. 232, to stiffen the penalties imposed on kidnappers in interstate commerce under Public No. 189 of the preceding Congress. The new Act permits the penalty of death if the verdict of the jury shall so recommend and continues for other cases the penalty in the original Act of imprisonment for such term of years as the court in its discretion shall determine. Recognizing that the safety of the kidnapped person should not be overlooked, the Congress provides that "the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharmed." The national legislators also took into consideration a situation dealt with by a number of state statutes, and exempted from the Act the case of a minor who has been abducted by a parent.

In another statute the Congress comes to the aid of the state prosecuting authorities by making it unlawful for any person to travel in interstate or foreign commerce with intent "to avoid prosecution for murder, kidnapping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing, under the laws of the place from which he flees."[8] The Act takes into consideration also the trying problem of the unwilling witness and makes it a crime for a person to travel in interstate or foreign commerce "to avoid giving testimony in any criminal proceedings in such place in which the commission of a felony is charged." The punishment for either offense is a fine of not more than $5000 or imprisonment for not longer than five years, or both. A violation of this Act "may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed." If the criminal is thus returned by the federal authorities, could he not be arrested by the state authorities and tried for his crime, so that this would amount to a convenient means of getting the person sent from one state to another without the process of extradition?

The 72nd Congress had dealt with extortion by the mails and made it a crime to deposit a letter or other communication in the mails with the intent of extortion, by a threat of injury to the person, property or reputation of the addressee or another, or to the reputation of a deceased person, or by a threat to kidnap any person, or to demand ransom for the release of a kidnapped person, or to accuse any person of a crime.[9] Making the same threats for purposes of extortion was made a crime by the 73rd Congress, where the threat was transmitted in interstate commerce by any means whatever.[10] The new Act expressly saves the Postal Act and establishes the same punishment, a fine of not more than $5000 or imprisonment for not more than 20 years, or both. The Postal Act dealt in an interesting way with the international situation by including the person who deposits in the post office of a foreign country a communication addressed to a person in the United States, if the letter is delivered to the United States post office and by it to the addressee. Thus the international crime is set in motion by the person who mails a letter abroad, but it does not become punishable in this country until the delivery by the foreign postal authorities to the United States post office.

Congress took measures also to protect federal officers or agencies by criminal law. Public No. 235 brings under the federal criminal jurisdiction any person who takes from another, feloniously or by violence, any property of a member bank of the Federal Reserve System or of a bank established under the laws of the United States. The person convicted faces a sentence of a maximum of $5000 or 20 years' imprisonment, but if in carrying out his enterprise he commits an assault with a dangerous weapon, the mercy of the court is not given such wide scope, for it must fine him at least $1000 and may fine him up to $10,000, or may sentence him to a minimum of 5 or a maximum of 25 years in the penitentiary, or both such fine and imprisonment. A further inducement to mercy on the part of the bank robber is the requirement that if a person is killed in the course of the robbery, or if a person is forced to accompany the evildoers without his consent, the law sternly imposes a prison sentence of not less than 10 years or, even, if the jury so directs, the ultimate penalty of death. The Act provides that jurisdiction over offenses defined "shall not be reserved exclusively to courts of the United States." The states have severe laws against bank robbery, so that it would appear that this statute brings into being a new case in which a person for the same act may be convicted by either the state or the federal jurisdiction, or in view of the decision in the prohibition cases, perhaps by both.[11]

In the closing days of the session Congress appropriated $25,000,[11-a] to be spent in the discretion of the Attorney General, as rewards for the capture of any one charged with violation of the criminal laws of the United States, any State, or the District of Columbia, and an additional $25,000 for rewards for information leading to the arrest of any such person. No part of the appropriation is to be paid to any employee of the Department of Justice.

The passage of the crime bills will mean a great increase in the federal force engaged in the detection and apprehension of criminals. It will also extend materially the duties of the federal prosecuting officers and the criminal side of the district courts. This increase may in time be offset by the lessening of federal crime through the re-

7. McDermott v. State of Wisconsin, 228 U. S. 115 (1913).
8. Public No. 233.
9. 47 Stat. 649.
10. Public No. 231.
11. United States v. Lanza, 260 U. S. 377 (1922).
11-a Public No. 295.

peal of the 18th Amendment, but the relief from this source may not come immediately if the war is to be pushed on the illicit producers and dealers who show disregard for the revenue laws of the United States. Congress may be faced with the necessity, as foreshadowed by the federal authorities when similar bills were before it, of increasing the appropriations for the Department of Justice and for constructing new prisons. If, however, the federal authorities are able to deal successfully with the operations of interstate fences, the saving to the business community will be enormous. The record of convictions under the automobile law makes it at least possible that the long arm of the federal government will be able to reach criminals who may escape the short arm of the state.

Congress was not only concerned with extending the power of the federal criminal authorities, it also took note of the consideration that prompt conviction is an important deterrent to the criminal and notably to such business criminals as the fence. It therefore vested in the Supreme Court the power to prescribe rules of practice and procedure with respect to proceedings in criminal cases after verdict. The Court cannot abridge the right of the accused to apply for a withdrawal of the plea of guilty, but such application must be made within ten days after entry of the plea and before sentence is imposed. While the right to appeal is continued, the rules may regulate appeal and the important question of bail on appeal. When the rules become effective they supersede laws in conflict with them.[12] The Court acted promptly and laid down new rules to speed criminal cases, notably limiting the time for motions and allowing bail pending appeal only if the appeal involves a substantial question which should be determined by the appellate court.[13]

12. Public No. 371, 72nd Congress; Public No. 117, 73rd Congress.
13. New York Times, May 8, 1934.

OUR METHODS OF GIVING EFFECT TO INTERNATIONAL LAW AND TREATIES

Brief Sketch of Some of the Numerous Questions Which Concern the Lawyer Engaged in the Application of International Law in a Practical Way—Injuries to Aliens Committed by Private Persons—Protection of Property Rights of Aliens—Methods of Giving Effect to Treaties—Application of International Law by International Tribunals—By the Department of State, etc.*

BY HON. FRED K. NIELSEN
Former Member Mexican-American Claims Commission, Former Solicitor Department of State

IT IS a pleasure to respond to a courteous invitation, which I have construed to authorize some general discussion of practical methods of dealing with international problems. I venture to urge the importance of wider interest and serious concern among members of the Bar generally with respect to measures to uphold the law of nations. To be sure, sage observations may have been made occasionally to the effect that there is no such law. And there is much less than voluminous writings may indicate to be in existence. A great deal has been written which is merely the views of writers as to what the law might be. I shall roughly sketch some of the numerous questions which concern the lawyer engaged in a practical way in the application of international law. Perhaps my remarks may suggest that the problems of that law with which he deals are far from being purely academic, and that the fields of questions of domestic law, pertaining to both civil and criminal matters, through which he must browse are so vast that at times they have uncomfortable aspects of a wilderness.

There has been considerable impetus for lawyers and laymen of Ohio to interest themselves in matters pertaining to international law and diplomacy. Under the Constitution of the United States, the President is charged with the conduct of our foreign relations, including the important functions of negotiation of treaties, with the advice and consent of the Senate, and the protection of the lives and property of American citizens abroad. If my recollection is correct, five citizens of Ohio have been entrusted with those great public duties in the course of a relatively short period of our history. The official through whom the President acts in such matters, as a general rule, is the Secretary of State. As I recall, on three occasions eminent statesmen of Ohio have filled that high office with distinction. Both posts have been occupied simultaneously by citizens of Ohio. This was the situation in one of the critical, abnormal periods of our history. President McKinley, a man of kindly and peace-loving instincts, was confronted with the question, whether our nation should suddenly be plunged into war, and the further questions as to the specific reasons on which the beginning of hostilities should be grounded. This latter problem was a grave one from the standpoint of our purely domestic interests. And its solution defined our Government 's position in the eyes of the world.

President McKinley was urged, as President Cleveland and President Grant had been, to give some form of recognition of belligerency to Cuban

*Address delivered at the Mid-Winter Meeting of the Ohio State Bar Association, held at Columbus January 25 and 26, 1934.

insurgents. Suggestions were also pressed that our Government should recognize the independence of Cuba. Whatever may be said of the American policy of hostile measures of intervention, it was fortunate that muddled expedients, without basis in the law of nations, were rejected.

It is gratifying to recall the composition of the American delegation to the peace conference at Paris in 1898; outstanding statesmen and lawyers; representatives of both the dominant political parties of our country. The head of the delegation was a citizen of Ohio, William R. Day, eminent lawyer, able diplomat, an honored judge on the nation's court of last resort. At home, foreign affairs were guided by the steady hand of John Hay of Ohio.

Recently, while acting in a temporary, diplomatic capacity, I became personally acquainted with another distinguished citizen of Ohio, former Governor Cox, and had the pleasure of observing his sincere efforts together with those of the head of the American delegation to the recent London conference, the Secretary of State, to protect American interests and to contribute on a high plane to the solution of international problems on the basis of fair dealing towards all nations.

Interest of Lawyers in Problems of International Law

I have suggested that members of the Bar may not be generally disposed to concern themselves much with international affairs. If the reason for any lack of interest is a feeling that such matters are not of great practical importance so far as our country and all its citizens are concerned, then it is not well grounded. Associations of lawyers, particularly the large American Bar Association, concern themselves with improvements in the teaching of domestic law, the administration of justice by the courts and the clarification of various branches of our jurisprudence, some of which may be of no considerable direct concern to many lawyers. I do not want to appear in the rôle of someone conceiving himself to have a mission or a lesson to administer. But it is perhaps not odd that one who has devoted about a quarter of a century to intensive, practical activities in international affairs should cherish a strong desire that such matters should, in some effective way, share in the useful thought and efforts devoted by members of the Bar to problems of law and government.

In connection with this thought, it is pertinent to observe that international law, and not the domestic law, statutory or constitutional, of our country and of other countries, is the supreme law of all members of the family of nations. For convenience I make a distinction between the two branches of jurisprudence, although international law is of course a part of the law of our land. I mean that the law of nations is supreme in the control of those subjects with which it is concerned; supreme in the regulation of the relations of States; supreme in the sense that acts of authorities of a government and its laws must square with the prescriptions of international law, if nations are to maintain their honorable positions as members of the family of nations by living up to their international obligations.

The interest of the lawyer and the layman in international stability, conserved through the maintenance of international law, is assuredly brought home to us keenly at the present time. It can scarcely be doubted, that the shadows that hang so gloomily over our land today, are at least in part aftermath of the great world struggle, from which it may seem to be difficult now to discern any worthwhile by-products. Unhappy Europe, as long as we have any recorded history of it, has been afflicted intermittently—one might almost say continuously—by the world's most hideous phenomenon, as I think war might be termed. In some of the numerous struggles, weaker powers have occasionally triumphed, largely through diplomatic moves, that have secured support of combinations, brought together by temporary common interests, and often soon dissolved by opposing interests. We have seen a kaleidoscopic picture of such historical events. President Roosevelt observed in a recent address that "alliances, combinations and balances of power have proved themselves inadequate for the preservation of world peace."

Far removed as we have been from such conflicts, especially in early days when distance so much more than now meant actual removal, the interests of the United States, even in the days of its infancy, have been seriously affected by European struggles. The wise father of his country quickly advised a definite policy of aloofness. In those early days our commerce was devastated by practical application given to decrees of belligerent sovereigns, each of whom undertook to extend dominion over vast areas of the seas, the common highways, and to declare interdiction of communication by neutrals with other belligerents. We were a very weak nation then, and we submitted to many indignities. Our Government undertook to forbid our ships from leaving American ports. Our vessels were promiscuously seized. Our seamen were taken from them on the high seas, and even in our own ports. Yet a noteworthy struggle was made in those days to maintain American honor and the rights of the nation and its nationals. Chief Justice Jay was sent to England to wrestle with unfortunate controversies. He negotiated a celebrated, unique treaty which contained provisions inaugurating international arbitration in its modern form. The great John Marshall was sent to France to negotiate with Talleyrand, said to have been the most accomplished diplomat of his time. Against chicanery, both subtle and crude, and proposals of dishonor, Marshall put unbending standards of honor and clear statements of principles of law. He did this even though, as Lord Craigmyle, a former member of the Judicial Committee of the Privy Council, observes in a delightful little book recently published:

> "He must have been conscious as his honour leaped to the battle of resentment, that a false step might precipitate a war, in which an infuriated France would dash the infant's brain out."

In discussing Marshall's equipment for his diplomatic mission, Lord Craigmyle summarizes his conclusions in this language: "I question whether, if other lands . . . had been ransacked, they could have produced a man better equipped than this Virginian to outface Talleyrand in Paris." The writer, in making this estimate, undoubtedly had in mind, not only the records of negotiations at Paris, but the later exceedingly interesting judicial pronouncements on international law, which are interspersed among the celebrated opinions of the

great judge, and which reveal his careful study of principles of that law.

Lord Craigmyle ends his fascinating account of the episodes between these two striking representatives thus:

"Shall any nation, even America itself, ever forsake the Marshall test, ever lower the Marshall standard? May God forbid!"

Marshall's weapons, moulded from powerful mental and moral forces, are always superior when employed by a national representative in any international activity, if they are supported by authorities of his own government. There have been interesting and varied descriptions of the work of foreign offices, and a distinguished phrase-maker is reported to have said that a diplomat is a person sent to lie abroad for his country. Diplomacy, without discussion of numerous ramifications of its activities at home and abroad, might, I think, be defined to be in the main a wise, painstaking, conscientious application of international law to questions that enter into international relations. Comity plays an important part in the relations of States, and comity may perhaps be roughly defined as treatment by nations of each other in the manner in which gentlemen deal with one another in private relationships.

We did have some kind of a war with France in the early days. And we formerly declared war against Great Britain, relying on the just legal cause of a violation of international law with respect to the exercise of sovereign rights on the high seas which were disregarded by British naval authorities when they boarded American ships and took from them American seamen. A little more than a century later, we quarreled with two sets of European belligerents and finally went to war with one. Our position then as a great and powerful nation was very different from what it was in those early, troubled days.

We are told occasionally nowadays that the law of neutrality has disappeared. International law is altered by the same painfully slow processes by which it is formulated; that is, through the general assent of nations, over which there is no superior authority that can prescribe rules. I find it difficult to perceive just how and when the law of nations with respect to neutrality disappeared. Federal statutes enacted to give effect to that law have not been repealed. We are a powerful government now, capable at all times of effectively asserting legal rights and of meeting the correlative requirement of complying with duties defined by international law. It seems to me that, when we are in a fortunate position of neutrality, free from the horrors of war, we may have a trust to uphold and vindicate the law through influences derived from the nation's position of prestige and power. I have the temerity to suggest a simple plan looking to the effective accomplishment of these and other purposes. It is, that officials of our Government should ground its position, in all serious crises, and with respect to all international difficulties, on a rock foundation of right under the law and then stand firmly on that foundation. Right, in a broad sense, may be a relative term, and honest men may differ with regard to the law. But even though little sustained effort has been made for the purpose, it is altogether feasible and not so very difficult, for our country to have a foreign office, or, as we say, a Department of State, equipped with an adequate number of officials who are guided by a lofty purpose and who are experts in the law and practices of nations. When a strong government speaks through such an agency, we may have the general expectation that it will speak well from the standpoint of law and of ethics. There is good prospect that its firm stand for observance of law will command respect, although it does not resort to hostilities or even to a threat of force.

Injuries to Aliens Committed by Private Persons

I think it is a long time since the American Bar Association gave more than slight attention to international affairs. We have some annual reports on current events. But as far back as 1892, we find an interesting discussion in the Association's *Report* for that year concerning a bill pending before Congress. The measure was entitled "A Bill to provide for the punishment of violations of treaty rights of aliens." It provided in part "that any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the peace and dignity of the United States, punishable in a like manner as in the courts of said States or Territories . . . and may be prosecuted in the courts of the United States."

The presentation of this bill and the discussion of different aspects of questions pertaining to the protection of aliens in the United States were not prompted by infractions of such concrete treaty stipulations as those relating to customs, taxation, rights of aliens to do business and other subjects that enter into the so-called commercial treaties. The agitation evidently grew out of the riots which occurred in New Orleans in 1891 and resulted in the loss of life of several Italian subjects. The discussion would have been more useful had it not centered largely about the construction of a brief, conventional treaty provision, such as that the nationals of each of the contracting parties shall receive in the territories of each other the most constant protection and security for their persons and property.

The treaty, said the committee in its report to the Bar Association, secured nothing more than equality of treatment of citizens and foreigners. That may be true, but I think that treaty provisions of this nature should rather be construed to guarantee to the nationals of the respective Governments rights secured by international law. Such stipulations are really superfluous. In matters such as were under consideration in the unfortunate controversy with Italy, governments always take account of reasonably well established rules and principles of international law.

The general rule of the law of nations with respect to injuries caused by private persons to aliens is, that reasonable care must be taken to prevent such injuries in the first instance, and suitable steps must be taken properly to punish offenders. In cases of this character, it is no defense to a complaint against the administration of penal laws that no better police or judicial measures were employed in cases affecting nationals. There is no precisely

defined standard by which to gauge the effects of acts or omissions in the light of international law. With a reasonable degree of precision, it may be said that the propriety of acts or of laws against which complaint may be made should be determined in accordance with ordinary standards of civilization. Doubtless more concise criteria of conduct would often be desirable. But I think that this general rule may be given a useful, practical application by adhering to the principle that one nation cannot properly call another to account, through diplomatic channels or before international tribunals, in the absence of convincing evidence of a pronounced degree of improper governmental administration.

The report of the Committee to the Bar Association objected to the plan to inject the Federal judiciary into the administration of criminal jurisprudence in the manner contemplated by the pending bill, and argued that there would be confusion as to the character of the offenses of which the Federal courts might take cognizance. There was considerable force in some of the arguments advanced. But a more effective analysis of the measure—one indispensable to any worthwhile conclusions, would have been to point out that the bill revealed an obvious lack of clear comprehension of the nature of treaties and of international law. Rioters do not violate any treaty or rule of international law by attacking and injuring, or killing aliens. But if authorities, after due warning of apprehended illegal acts, fail to take preventive steps, or to employ proper punitive measures, the nation becomes responsible for an international delinquency by failure to live up to the rule of law I have indicated.

We have some Federal penal legislation enacted for the purpose of meeting obligations of international law and treaties. Thus, diplomatic officials enjoy certain privileges with respect to restraint of person and property and exemption from judicial process in civil and criminal matters, and by Sections 4062 and 4064 of the Revised Statutes of the United States, restraint of person or property of diplomatic officers and the service of process on them are made Federal offenses, punishable by fine or imprisonment. So a multilateral treaty prescribes rules with respect to assistance and salvage to vessels, and a Federal statute requires the performance of such services and prescribes punishment for failure to render them.

A penal law, efficacious in carrying out the general rule of international law which I have mentioned with respect to the protection of aliens, if a practical measure could be framed, would be one punishing lack of zeal and conscientious discharge of duty by policemen, detectives, prosecuting attorneys, juries and judges. On some supposition, perhaps erroneous, that Federal courts and Federal juries might be less susceptible to anti-alien feelings, statutory provision could perhaps be made for the trial, solely in the Federal courts, of aliens accused of crimes, or of citizens accused of offenses against aliens. Perhaps it could be provided that Federal officers might intervene in proceedings of State courts involving the interests of aliens. But it is unlikely that any such legislation, making such or other distinctions between aliens and nationals in the administration of penal laws, will be enacted.

Some time ago, I recall examining carefully instances of mob violence in the United States since the year 1811, and I discovered records of some twenty unfortunate occurrences of this nature. In some instances indemnities were paid. I believe that such manifestations of anti-alien feeling have decreased in our country. Perhaps it cannot be said that this is because criminal acts have noticeably diminished, nor that there has been material improvement in the administration of criminal jurisprudence. Yet it is in such an improvement that the effective remedy must be found. And obviously it would be useful if State authorities should always be conscious of possible disagreeable international complications in connection with cases affecting aliens.

Protection of Property Rights of Aliens

The protection of property rights of aliens has given authorities much concern. Important interests of Americans abroad have not infrequently been jeopardized or damaged or destroyed. American citizens have large interests in foreign countries today. From time to time there have been complaints against acts of authorities of our own country. Our laws safeguard rights of aliens, and I think that in a gratifying manner our courts have as a rule taken measures preventive of unlawful acts and have afforded redress when wrongs have been committed.

There is much evidence in various forms to show a general recognition of the principle that the confiscation of the property of an alien is violative of international law. It is also important to take account of domestic laws throughout the world generally forbidding confiscation of property. Such laws are indicative of a sentiment and a domestic policy that have been given expression in international practice. I am of the opinion they may also be considered as having an even more direct bearing on the status of international law. It is a maxim of that law that an alien must be accorded the benefits of local law. The principle must be applicable to such important domestic laws as those that safeguard persons from being despoiled of their property. In international law the prohibition against confiscation has a particular significance, I believe, because it may properly be given the very broad application which has been found for it in domestic law; and furthermore, principles underlying it may advantageously be extended into a wider field in which, occasionally, there may be an absence of concrete rules of international law.

International tribunals have frequently rendered awards in cases involving the failure of a government to fulfill contractual obligations. The general policy of our Department of State has been to regard complaints based on breaches of contracts by governmental authorities as falling within a class of cases with reference to which no diplomatic action should be taken to assist American citizens, except in rare instances, save by the use of informal good offices. I think there has been some confusion of thought concerning principles of international law applicable to such cases, and occasionally a convenient failure to give them application. Very seldom has there been any reference in opinions of international courts to rules or principles of law relating to the basis for international responsibility.

The law of nations does not embrace any "Law of Contracts," such as is found in the domestic

jurisprudence of nations. Claims presented by governments in behalf of nationals to recover before international courts for losses resulting from breaches of contracts are not suits such as come before domestic courts. An international tribunal does not specifically apply rules of domestic law, either adjective or substantive, in reaching its ultimate conclusions respecting international liability. The rights of a claimant under a contract must clearly be determined in the first instance by application of the proper, domestic, substantive law governing the right of parties to a contract; the ultimate question of international responsibility for acts of authorities with respect to contractual rights must be decided in accordance with international law, if there is any applicable law which I believe there is.

Possibly some application might be given to the general principle that an alien is entitled to rights secured under domestic law. It may be said that, when in any given case that law requires that compensation should be paid under the terms of a contract, failure to meet the legal obligations of the contract under domestic law is violative of rights secured by international law. But any such reasoning would not be sufficiently comprehensive to cover some cases that have arisen, as when, for example, local law prevented payment of obligations instead of requiring it. It has at times been undertaken to nullify debts by local law.

It would seem that, in the ultimate determinations of responsibility under international law, effect may properly be given to legal principles with respect to confiscation. If for example a government agrees to pay money for commodities and fails to make payment, it may be said that the purchase price of the commodities has been confiscated, or that the commodities have been confiscated, or that property rights in a contract have been nullified. And it would also seem clearly to be proper to apply such principles when rights are destroyed, because an alien is prevented in other ways from realizing the benefits of a contract: when for example a concession is improperly cancelled or its development seriously hampered or frustrated; or when one party to a contract is prevented by public authorities from carrying out obligations in favor of another party.

These principles relating to confiscation seem clearly to be applicable to contractual arrangements when a government obtains loans from private alien sources and later defaults in payment. The same may be said with respect to loans which a government may obtain from another government. Moreover, in matters of that kind, it would appear obviously proper to take account of the sanctity which the law of nations attaches to international covenants. A violation of a treaty is a violation of international law. The principle of the rule must be applicable to international covenants generally. In the *Metzger* case,[1] the Honorable William R. Day, sole arbitrator, speaking of the obligations under "settled principles of international law," of an arrangement between two nations not made with the formalities required by the domestic law of each with respect to the conclusion of treaties, said: "It cannot be that good faith is less obligatory upon nations than upon individuals in carrying out agreements."

Cases before the Permanent Court of International Justice with respect to Serbian and Brazilian loans are interesting in relation to the legal questions involved in international reclamations predicated on allegations of breaches by governments of contractual obligations entered into with private persons.[2] The fundamental issue in these cases related to the monetary basis on which payments should be made of the principal and interest of government bonds containing the so-called "gold clause." The debtor nations contended for the right to make payments in paper francs. Complaints of bondholders against payment in a depreciated currency were espoused by the French government. The court held that, conformably to the domestic law governing the legal effect of the obligations, payment should be made in gold, which should be taken to be the gold value with reference to the gold standard of value at the time the loans were made; that bondholders were entitled to receive on demand equivalent amounts, according to banking practice, in foreign money, in designated places of payment.

The court's preliminary disposition of jurisdictional questions is interesting, in that it seems to indicate that the court considered that the cases involved no issues respecting liability of the respondent governments under the law of nations. But it declared that its decisions were not limited under the statute by which it was created to questions of international law, and it held that it had jurisdiction in both cases.

It seems difficult to perceive why cases of this kind should not be considered to involve issues with respect to derogations of the law of nations. The court evidently took the view that the legal effect of the contractual arrangements of which breaches were alleged should be governed by the respective laws of the respondent governments; that the private rights which it was contended were disregarded were determined by these local laws, which the court held required payment in gold. In cases of this character, when such a construction is put on local law, it would seemingly not involve any farfetched reasoning to give effect to the general principle of international law that aliens are entitled to rights secured under domestic law. Nor would there appear to be any obstacle to a proper application of principles of that law with respect to confiscation of property. When the court found that adequate payment was not made in satisfaction of these loans, it would seem that it might properly have held that there was a confiscation to the extent of the inadequacy.

Both domestic courts and international courts have often been concerned with arbitrary acts of authorities, civilian and military, destructive of property rights. In such cases, opinions of international tribunals have again frequently revealed a vacuity of reasoning in legal terms. Acts of authorities have often been condemned as "arbitrary," sometimes as "wicked." In a great number of cases, the Supreme Court of the United States has given application to provisions of the guarantees found in the Fifth and Fourteenth Amendments to the Federal Constitution with respect to "due process of law" in matters pertaining to life, liberty and property; "just compensation" for property taken for public use; the "equal protection of the laws"; and impairment of the obligations of contracts.

1. Moore, *International Law Digest*, vol. VI, p. 690.

2. Nos. 20/21, *Collection of Judgments*.

These guarantees are applicable to rights of persons and property of aliens. There are some very interesting cases with which you are familiar. I think they are of especial interest in their value by way of analogous reasoning with respect to international cases.

A state law restricting the employment of aliens has been held to be violative of the Fourteenth Amendment of the Constitution.[3] The "right to earn a livelihood and to continue in employment unmolested by efforts to enforce void enactments," is one, it was said, which a court of equity should protect. The court has sustained the power of a court of equity to restrain civilian and military authorities of a state from interfering with the production of oil within the state.[4] American courts will interfere to prevent public authorities from requiring public service corporations to render service at rates that are "unjust and unreasonable and such as to work a practical destruction of the rights to the property."[5]

The Supreme Court has declared that, when a law is in the nature of a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; that a party to a contract cannot pronounce his own deed invalid, although that party is a sovereign state; that a law of one of the states of the Union, annulling conveyances, was unconstitutional, because it was a law impairing the obligation of contracts, within the meaning of the Constitution of the United States.[6]

The terms of the guarantees found in the Constitution of the United States and in the constitutions of other nations are of course not written into any conventional international law. But I am of the opinion that international tribunals may usefully and properly give effect to the broad principles underlying these guarantees in dealing with problems of international law pertaining to confiscation of property rights in various forms.

Methods of Giving Effect to Treaties

I shall further undertake to make a few observations regarding our methods of enforcing treaties in the United States, although the subject is one that can be treated but inadequately in a meagre discussion.

I will return to Ohio for an interesting precedent. In 1879 President Hayes vetoed an Act of Congress requiring him to give notice to the Government of China of the abrogation of Articles 5 and 6 of the so-called Burlingame Treaty, concluded July 28, 1868. These Articles related to emigration and immigration.

President Hayes declared that "the power of making new treaties or of modifying existing treaties is not lodged by the Constitution in Congress but in the President by and with the advice and consent of the Senate." This treaty did not provide for a partial abrogation on notice of either party. The same situation exists generally with respect to similar treaties. Elimination of certain stipulations can therefore be effected only by negotiation. The House of Representatives has no part in the negotiation of treaties under our system, and Congress could therefore not force the President to negotiate or to commit an act violative of the treaty and therefore violative of international law. This was in effect the ingenious, and I think sound, reasoning employed by President Hayes with respect to our domestic machinery in relation to international arrangements. Nevertheless, by the so-called Seamen's Act of March 4, 1915, and the so-called Merchant Marine Act of June 5, 1920, Congress adopted the procedure followed in 1879. As is well known, it has also passed Acts directly contravening treaties.

The situation which arises in the United States when Congress passes and the Executive approves an Act resulting in the violation of a treaty, has now been made reasonably clear by judicial decisions, in spite of confusing language occasionally employed in some opinions to explain such decisions. There has been too much use of terms of domestic law in dealing with questions that are governed by international law. The "proper rule of law"—if I may use that term a little loosely—the proper and the only rule of law, which, in my opinion, governs questions pertaining to the legal effect of a treaty is the rule of international law that asserts the sanctity of a treaty and condemns its violation.

By the Constitution, the courts have said, a treaty and a Federal statute are placed on the same footing, and if the two are inconsistent, the one last in date will control. If the country with which the treaty is made is dissatisfied with the action of the legislative department in causing a violation of the treaty, it may present its case to the Executive Department of the Government and take such other measures, including a resort to war, as it may deem to be essential to the protection of its interests.[7] The treaty cannot be enforced as municipal law of the land—to use another somewhat loose expression—but the international obligations remain.

Our domestic machinery for vindicating through the Judiciary rights secured by treaty stipulations may perhaps be explained in simpler and more accurate language this way: State statutes are not part of the supreme law of the land under the Constitution. They will be declared void when they contravene stipulations of treaties. But when the Legislative Department of the Federal Government, acting with reference to some subject within any of its delegated powers, such as matters pertaining to customs or immigration, contravenes a treaty, the courts will not interfere. I do not quarrel with the ultimate conclusion, but I do think that it is useful to take exception to some expressions that have been employed in reaching it. It has been said that a statute in derogation of a treaty "abrogates" the treaty, or "modifies" or "amends" it. It is difficult to see that a treaty is abrogated or amended, when its obligations as determined by the proper rule of law remain. It has also been said that a "repeal" or an "implied repeal" results. A statute may be repealed in express terms by another statute, and we may have statutory repeals by implication. But I find it difficult to follow the reasoning, speaking again purely in terms of domestic law, to the effect that under our domestic machinery of

3. *Traux v. Raich*, 239 U. S. 33.
4. *Sterling et al. v. Constantin et al.*, 237 U. S. 378.
5. *United Railways and Electric Co. of Baltimore v. West et al.*, 280 U. S. 234; *Smyth v. Ames*, 169 U. S. 466.
6. *Fletcher v. Peck*, 6 Cranch, 87. See also Nielsen, *International Law Applied to Reclamations*, pp. 33-41

7. *Head Money Cases*, 112 U. S. 580; *Whitney v. Robertson*, 124 U. S. 190.

legislating in a constitutional manner we have either an express or implied "repeal" of treaties by statutes, even though we do have contraventions. I think it might better be said that under our domestic system a treaty may be modified or abrogated in accordance with its terms or by another treaty, and in no other way.

Whatever may have been said in the past, it seems to be clear that the Supreme Court has not always given practical application to the statement underlying some of its decisions to the effect that a treaty and a statute under the Constitution "are placed on the same footing." The court undoubtedly is committed to the legal proposition that by a treaty the Federal Government can accomplish what it is not competent to deal with by legislation. In the interesting case of *Missouri v. Holland*,[8] Mr. Justice Holmes, speaking for the court, observed that the so-called Migratory Bird Treaty, not being in derogation of the Constitution, legislation to carry it into effect must be valid.

I have indicated the results arrived at by the Supreme Court in a number of decisions. There can be no harm in suggesting another possible, seemingly not violent, way of reasoning: The Constitution and Federal statutes made pursuant thereto, and treaties, are the supreme law of the land. The courts will vindicate rights of a person under a statute as against acts of officials of the Government depriving him of such rights, while the statute stands, unrepealed or unmodified by the constitutional method of doing so, which is by another legislative enactment. They will vindicate substantive rights under a treaty, until the treaty has been modified or terminated by the constitutional method, which is in accordance with its terms or by another treaty and not by a statute. However, there are other nations in which the legal situation is the same as with us.[9] A simple remedy for avoiding unfortunate difficulties such as have often occurred is by better cooperation between Congress and the Department of State. The success of such cooperation necessitates, on the one hand, solicitude on the part of Congress in seeking advice, and, on the other hand, understanding and care on the part of officials of the Department of State. In the past there has been fault on both.

Occasionally there has been discussion of what has been termed "unconstitutional treaties." In connection with this subject loose expressions are probably due also to the exclusive employment of terms of domestic law and a failure to take account of what I have termed "the proper law" pertaining to international obligations. Those obligations of course would subsist, even if treaty-making authorities should misconstrue and exceed the extent of their power under our law. The Supreme Court has never found a case in which they have done so. However, it is obviously a matter of serious concern to officials that, from the standpoint of the domestic law of the United States, there are limitations on the exercise by the Executive of his functions in making treaties by and with the advice and consent of the Senate. It seems to be clear that, if substantive rights under a treaty, authorizing something forbidden by the Constitution, should be invoked in judicial proceedings, the courts would not sustain such rights.

The Supreme Court of the United States has often discussed the extent of the treaty power conferred on the Federal Government. The court has never found that the power has been exercised in any case to accomplish, in the language of Mr. Justice Field in *Geofroy v. Riggs*,[10] "what the Constitution forbids, or a change in the character of the Government or in that of one of the States."

This declaration in the opinion of the Court in that case, defining broadly unauthorized use of the treaty-making power, is general, but is very useful. It does not in detail define the vast field of subjects embraced within the treaty-making power, as it can be properly exercised by the Executive and the Senate under the domestic law of the United States. But it seems to indicate broadly and comprehensively what is excluded from the treaty-making power, namely, what the Constitution forbids, and, a change in the character of the Federal Government or of the government of one of the States.

In addition to such simple, and perhaps crude illustrations as those relating to a change in government, one perhaps a little less obvious might be suggested, such as provisions of a treaty conferring on aliens the right to hold public office in the States of the Union. As an illustration of authorizing something which the Constitution in literal terms once forbade one might suppose a treaty giving foreign ships the right to bring intoxicating liquors into the American harbors, in spite of the fact that such importation was forbidden by the Eighteenth Amendment to the Constitution. In the opinion of the Court in *Missouri v. Holland*, there is a very broad definition of the treaty-making power in general terms.

The Supreme Court has said that the framers of the Constitution had in mind treaties of the character in use, when the Constitution was formulated; that is a natural conclusion. But obviously the treaty-making power is not limited to such treaties as had been made up to 1789. Among such treaties were not found any with respect to limitation of naval armament; the protection of fur seals in the waters of the Pacific Ocean; the regulation of aerial navigation and aerial warfare. Many other varieties of later days could, of course, be mentioned.

Except with respect to subjects expressly or impliedly excluded by the Constitution, the Executive and the Senate can make treaties relating to all those matters with respect to which nations may deem it to be proper to contract. There is evidently nothing in the Constitution to hamper the United States as a sovereign nation from negotiating freely with other nations in accordance with the principle of equality of States. Our Federal Government is a government of delegated powers, but each Department acts with plenary authority with regard to subjects delegated to it. The scope of the treaty-making power vested in Federal authority is not prescribed or limited by explicit rules and principles of local law, but must be defined in the light of international law and practice.

When complaints have been made to the appropriate authorities of our Government with respect to infringement of treaties, or acts that might result

8. 252 U. S. 416.
9. See *Annual Digest of Public International Law*, McNair and Lauterpacht, Years 1925-1926, p. 346.
10. 133 U. S. 258.

in contraventions, it has generally been necessary to advise that remedies with respect to the violation of substantive rights guaranteed by treaty provisions should be sought in our courts. A great number of decisions involving the interpretation of treaties has been rendered by Federal courts and by State courts. These decisions have generally revealed care and a scrupulous sense of fairness. I think that very seldom, if ever, has a foreign government found a final decision objectionable.

But at times foreign representatives have been impatient with this procedure in the courts. There has been a feeling that a powerful and wise Secretary of State, or someone acting in the capacity of a Minister of Justice, should be able to prescribe proper rules of conduct for both Federal and State officials, judicial and administrative, and for legislative authorities. One can appreciate the difficulties they have in mind. For example, if a State legislature enacts a poll tax law which discriminates against aliens, in violation of treaty stipulations, it is a long and expensive journey to the supreme tribunal at Washington for the vindication of rights which, from a material standpoint, are not very great—at least not as regards the exactions from a single alien. In some cases it has been possible for the Department of State, when informed in due time, to make suggestions to the governor of a state to lay the Department's views before members of the legislature, or to veto a bill that has been passed. Representatives of the Department of Justice, at the request of the Department of State, have occasionally obtained permission from Federal courts to intervene in proceeding to present views with respect to the construction of treaty provisions.[11] Authorities of the Federal Government have been permitted to intervene for such purposes in the proceedings of a State court.[12]

It may be that use could be made of proceedings of injunction by Federal authority to prevent the operation of State statutes which might be considered to contravene treaties, or that, in any event, Federal legislation could be enacted to authorize such proceedings. But I do not think that there is much prospect for the enactment of such measures. The practical remedy for avoiding international difficulties lies in a better understanding of legal principles and in a spirit of useful cooperation between the State and the Federal authorities.

The interpretation and application of treaties pertain to both administrative and judicial authorities. And there may be occasions when something more than a passive attitude of giving advice as to recourse to judicial remedies may be expected from administrative authorities vested with the conduct of a government's foreign relation. As I have indicated to some extent, occasionally judicial remedies are not available.

Application of International Law by International Tribunals

International law has no sanction, such as is enforced through the marshal, the sheriff, and sometimes the army and the fleet. Nations alone can be called to account for infractions, and on their honor we must rely to guarantee the maintenance of the law. However, in a sense, it may be said that the decisions of international tribunals are sanction back of the law of nations; the only legal sanction. They do purport to give redress for wrongdoing. Cases submitted to arbitration in any form, for the most part, involve important questions. There are preliminary questions with respect to nationality, which is the justification in international law for the intervention of a government of a country to protect persons and property in another country; questions of admiralty law involving issues as to responsibility for faulty navigation of public vessels; questions of military law related to complaints against the acts of soldiers; questions of contract law in litigation based on complaints of breaches of contractual obligations by governmental authorities; questions relating to titles to real property when improper deprivation of such property is alleged; questions of criminal law when charges are made with respect to improper trials of aliens, or failure adequately to prosecute presons who have injured aliens; a great variety of questions of domestic law, adjective and substantive, in cases involving charges of denials of justice, as the term is understood in international law, applicable to complaints against judicial proceedings. These illustrations could be continued at great length. Finally, of course, ultimately controlling rules or principles of international law or provisions of treaties are determinative of international responsibility. Property interests in international litigation are often very great. Precedents are almost invariably important. From the standpoint both of international relations and of private rights, it is important beyond possibility of over-statement that the proceedings of international tribunals should be guided by the highest standards of efficiency, dignity and honor that characterize the deliberations of the most respected domestic high court. Some proceedings have given reality to that concept; some have made a mockery of it.

Nations have undertaken to abolish war, when, in explicit language, they have declared in some bilateral treaties "there shall be perpetual amity" or "there shall be a perfect, firm and inviolable peace and sincere friendship" between the contracting parties. They abolished what has been called private warfare, when without uncertainty of meaning they declared in a multilateral treaty, concluded in 1856 "Privateering is, and remains abolished." They may undertake, in another multilateral treaty, to renounce war "as an instrument of national policy." I find it difficult to conceive that the phenomenon of war, present throughout recorded history, can be abolished by affixing signatures to a sentence or two, without action or thought with respect to a corresponding, adequate development of those processes of civilization which substitute judicial determination for force in domestic law as well as in international law. In 1929, the present Chief Justice of the United States was a delegate to a Pan-American conference to frame an arbitration treaty. During the course of some remarks he said: "It is quite obvious that it is not sufficient to renounce war, unless we are ready to have recourse to the processes of peace."

We have no part as a Government in the activities of the Permanent Court of Internationl Justice. We are a party to the international treaty which made provision for the Permanent Court of Arbitration at The Hague. That so-called Court

11. *Sullivan et al. v. Kidd*, 254 U. S. 433; *Cheung Sum Shu et al. v. Nagle*, 268 U. S. 36.
12. *Petersen et al. v. State of Iowa*, 245 U. S. 170.

has not been very active for some time or indeed at any time. It was an interesting landmark, and it has rendered valuable services. Our Government has finely evidenced its desire to assist in the judicial determination of international controversies on a high plane by designating on the American panel, in most instances, men of the highest standing on the bench and at the bar, as was the case with respect to the designation a short time ago of a very eminent member of your own bar, Mr. Baker. We rely on the temporary tribunals set up from time to time through bilateral agreements. In connection with their activities American lawyers have occasionally rendered excellent service as counsel and in judicial activities. Such tribunals have wide jurisdiction and great powers as courts of first and last resort, so to speak, vested with final, unappealable determination of important issues of law and fact. In this field of arbitration there has been deplorable retrogression in recent years—unconscionable delays, indifference, neglect, at times pitiable lack of qualifications of counsel and of those engaged in judicial activities, and even far more serious evils. Authorities of our own Government have been greatly at fault with respect to such conditions. In a report to the American Bar Association made about a year and a half ago, considerable mention was made of the arbitration of a single case. Nothing was said concerning the pendency of thousands of cases, some very old, arrangements for whose judicial determination were stipulated ten years ago. These courts are temporary judiciaries under laws of our land. I bespeak the interest of members of the bar in this subject. Denunciation of acts of indifference or ignorance or deliberate wrongdoing which result in prostituting the high purposes of the law might stimulate remedial effects.

Application of International Law by the Department of State

Our most important agency for the application and maintenance of the law of nations is our Department of State. It is the Department charged with the conduct of diplomacy, and diplomacy failing, with arrangements for judicial determination of international difficulties. In my opinion, we have found in this Department in recent years another distressing picture of retrogression from former standards, in spite of the presence there of many useful patriotic public servants. In connection with reformatory action, it might be well effectively to explode mischievous misinformation concerning the attitude of Congress. It has often been stated that that body has been niggardly in appropriations for the Department of State. I feel certain, speaking in the light of some personal experience, that over a long period of years, assertions to that effect have had no foundation in fact. I believe that interested members of Congress have been friendly and patriotic, and that that body has appropriated money far in excess of that needed for a dignified, efficient and honorable foreign office.

A bill introduced in the House of Representatives some years ago by the late Representative Porter of Pennsylvania struck effectively at some existing evils. But I think that it contemplated a too ponderous and expensive organization. I hazard the broad declaration that no accomplishment could be of more importance to our Government than a properly organized and equipped Department of State. Steps in the right direction are a rational and practical foundation on which to labor for the proper protection of American interests abroad, for the upholding of American honor, and for the promotion of peace among nations. Such an institution will deal with the problems before it in the light of a clear concept that they are to be resolved in accordance with a just application of that law, the purposes of which are the avoidance of sanguinary conflicts and the establishment and vindication of rights among nations, great and small, by peaceful methods, conformably to rules and principles of law; rights which often inure directly to the benefits of nationals. And in giving reality to that concept officials will be guided by the standards of John Marshall at Paris in 1797.

Arrangements for Annual Meeting

(*Continued from page* 482)

Explanation of Type of Rooms

A single room contains either a single or double bed to be occupied by *one* person. A double room contains a double bed to be occupied by *two* persons.

A twin-bed room contains two beds to be occupied by two persons. A twin-bed room will not be assigned for occupancy by one person.

A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservations, stating hotel desired, number of rooms required and rate therefor, names of persons who will occupy the same, and arrival date, including definite information as to whether such arrival will be in the morning or evening.

As space at the Schroeder Hotel is exhausted, please specify one of the other hotels listed in requesting reservations.

Reservations should be made as early as possible. Requests should be addressed to the Executive Secretary, 1140 North Dearborn Street, Chicago, Illinois.

New Plan to Determine Character of Foreign Attorneys

(From The Bar Examiner, June, 1934)

Of great interest to bar examiners and character committees all over the country is the announcement that The Committee of Bar Examiners of The State Bar of California has delegated to The National Conference of Bar Examiners the function of investigating the character of attorneys from other states seeking admission in California. By this action, California becomes the first state to adopt this policy.

The important task of finding out about the character of foreign attorneys can best be done by a central agency in constant contact with all states and in a position to establish sources through which an independent investigation may be conducted. This system was suggested in the January issue of The Bar Examiner, (page 51).

Recently the Executive Committee of the National Conference authorized its Secretary to send a resolution to the various boards, to advise them of the two-fold purpose of the plan, and to urge upon them the desirability of taking immediately such steps as were required to make the change in fees and in procedure.

The Student Movement in Bar Association Work—Effect of Experiences on Young Lawyer's Later Professional Outlook

BY WILLIAM B. MCGUIRE
Former President Duke Bar Association; Member North Carolina Bar
and
H. C. HORACK
Professor Duke University Law School

ABOUT a month after the opening of school the suggestion was made that the students of the law school organize a Student Bar Association. Just where the time for such work was to come from was not indicated, but nevertheless Richard was intensely interested. He knew vaguely of the American Bar Association, and certain state and local bar associations. The latter he had heard did little more than attend a funeral "in a body" occasionally, but, so he was told, the American Bar Association and certain of the state bar associations were actually accomplishing things. Just what these associations were doing or what a student association could do none of the students could say, but at any rate this seemed to offer an opportunity to become acquainted with what was going on in the profession and with what the progressive lawyers were thinking about, and therefore everyone was anxious to set up an organization and give it a try, to think about lawyers' problems and get away from the eternal grind of reading and briefing cases. Maybe this was what the Judge had in mind when he suggested that students in law schools "where they had nothing else to do" should learn more about professional problems.

The Association was organized with an executive committee composed of the elective officers, and nine sections corresponding in name to those found in the American Bar Association and most state associations, the chairman of each section being appointed by the executive committee. Everyone came to the first few meetings to see what it was all about, but no one seemed to make any such discovery.

No one seemed to know what to do or what could be done by such an organization. The sections wholly failed to function and meetings degenerated into frivolous arguments over such matters as whether, or where, or when to have a student dance, or other equally important student affairs. A few students took advantage of the meetings to practice public speaking without having anything to say. The organization that had started out with the ambitious title of "The University Bar Association" found itself nothing but a weak self government association dealing only with ordinary student affairs and with no greater knowledge of professional problems than it had had at the beginning. At last the students as grouped in the various sections met to discuss the reason for this failure. Immediately it was clear. The students were still interested and wanted an association, but—and this was their great discovery—they didn't know what a bar association should do, or how they should go about doing whatever such an association should do. They asked for faculty supervision and guidance; they did not want faculty control. The students wanted it to be their organization with voluntary participation but they *did* want advice. Here a new complication arose. Many members of the faculty knew little, and cared less, about bar association work. Some who had been active in professional organizations were familiar only with certain local voluntary bar associations and did not expect any bar association to do any serious or constructive work. It seemed as necessary to educate the faculty as the students!

So there appeared the necessity for counsel by those acquainted and in sympathy with the real possibilities of bar association work in order to inform the students as to these possibilities. It being admittedly desirable for them to be interested and active in bar associations as lawyers, they found themselves, as students, totally ignorant of the nature of the work of a bar association, and, without some guidance, apparently incapable of running one.

Now with the counsel of interested and experienced men the students set to work. Beginning with an opening meeting, at which plans for the year's work were outlined, the program, with monthly meetings spread over the year, was designed to correspond to the intensive three or four day program of the annual meeting of the American Bar Association or an active state bar association. Not being unmindful of the social aspect of the well rounded lawyer's life, a number of Association dances were arranged for by the Section on Law School Affairs, and, with the cooperation of the wives of the Law School faculty, the Association held a number of informal receptions.

The whole project being an experiment, it was necessary to try various types of programs for the monthly meetings. It was found that the students wanted outside speakers, in part. But, still more, they wanted student participation by way of section reports, and, particularly, open forum discussion, especially on problems of interest to lawyers but of which most students had some information from their general reading.

There was considerable doubt expressed that the students would have time for serious bar association work without interference with their studies. As a practical matter, here as elsewhere the answer was that the students who wanted to do so had time for their section work and to serve on committees and attend meetings, and, strangely enough, all seemed to find time to attend all social affairs that the organization sponsored. A sufficient number not only were anxious to prepare reports for presentation before the Association, but, also, they asked for the opportunity to publish their work in their own Bar Association Journal, promising to do work worthy of publication.

Of particular significance as indicating the professional attitude of the students after the year's trial of bar association work was their adoption of the "Professional System." This System made the Association entirely self-governing as to general student conduct, setting up a disciplinary procedure similar to that usually found in an incorporated bar association. The Section on Grievances and Professional Conduct had original jurisdiction to hear all cases, with an appeal from its decision to the Board of Governors whose decision was to be final. When presented with the question of adopting this system, the point at issue proved to be—should each student assume any responsibility for the conduct of his fellow students? The

students approached the question as one of a professional nature and very definitely answered in the affirmative. The argument went as follows: If the profession is to maintain proper standards and command the respect of the public, its members must assume the responsibility of maintaining these standards, and such responsibility should be assumed in Law School as well as after receiving a license. Whose business is it what other lawyers do? Whose concern is it what the public thinks of the profession? Is it too early to begin thinking about these questions while in Law School?

Some had prophesied that the organization would end by being no more than a mere student government association regulating minor matters of law school discipline. But such was not its fate. In fact the Association functioned as it was intended—as a part of the process of legal education, designed particularly to interest students in the broad problems of the profession, to inform them of their professional obligations, and to train them to assume their professional responsibilities.

Some there were who still asked, Why a Bar Association? What's the use of studying lawyers' problems before we are lawyers? Do Bar Associations ever accomplish anything, anyway? But a survey of legal periodicals and bar association proceedings showed that questions of this type are not peculiar to law students. And there were a few who said with frankness that they were studying law in order to make a living and not to help save the public, and they cited prominent practitioners of their acquaintance who held the same view. Yet with the discussion of these problems the reasons for bar associations and preparation to take part in them seemed to become clearer.

As Richard Roe leaves Law School to become an active practitioner he is determined to take an active part in his local and state bar associations. His experiences in the student association have convinced him that the profession can improve itself through the medium of bar associations, and that it is his duty as a member of the profession to aid in bringing about this improvement. In his first year out of school, together with a number of other recent law school graduates he helps to organize a "Junior Bar Association" because many of the older members of the bar in his community were still asking the question, "What good are bar associations, anyway?" and answering it by saying, "All they ever amount to is for a few lawyers to get together to elect each other to some office in the association."

With the enthusiasm of youth, Richard writes back to his school, "If you can send us a few men each year who are really interested and who have some conception of bar association work, in ten years' time we can change the professional attitude of our whole bar and the public's opinion of us. And just think what it would mean if every law school in the country was sending out men who believe as we do in bar associations as a means of improving the profession!"

Wholesome and Inspiring Instructions of Kansas Judge

Following are the instructions recently given to a jury by Hon. Ross McCormick, Judge of Division Number One of the District Court of Sedgwick County, Kansas. They were sent to the JOURNAL by a member of the Kansas Bar, with the comment that they are wholesome and unique and the suggestion that they be published. The JOURNAL is glad to comply with the suggestion.

INSTRUCTIONS

Members of the Jury:

Read these instructions thoroughly before you commence your deliberations. You are now more than mere citizens and tax-payers. You are jurors and a definite part of this court, with the same high source of authority and the same weighty responsibility. The same honesty and integrity is required of you as is required of me.

Our duties differ. You find the facts; that is your duty. I declare the law; that is my duty. If you go outside the evidence and these instructions, you violate the law and your oath. Allow no one, on or off the jury, to suggest it. If any one does suggest it, report him to me. No man or jury is wiser than the law; obey the law.

If we ourselves violate the law, how shall we, in honor, sit in judgment on others?

The Scriptures say:

"First cast the beam out of thine own eye, then shalt thou see clearly to cast the mote out of thy brother's eye."

In other words, if we are right ourselves, we can do impartial justice. No worthy judge, no honest juror, fears to do right.

At the outset of your deliberations, therefore, remember your oath and resolve to live up to it. It provides that you and each of you will well and truly try the matters submitted to you and a true verdict give according to the law and evidence. It binds your conscience to a solemn sense of duty and of justice. Bear it constantly in mind.

It means that no ill-will, no prejudice, bias, or favor, for or against any law, litigant, or attorney in the case shall, in the least, influence your verdict. It means that no stiff-necked stubbornness or obstinacy shall enter your deliberation, but that reason and common sense shall prevail among you. It means that you will acquit yourselves like men (and women) of honor and character. Anything less on your part will be highly reprehensible.

You will thus do justice, maintain the dignity and integrity of this court, and demonstrate again the merit and reliability of the jury system.

American Ambassador Honored

(*From Scottish Law Review, May*, 1934)

It may have been noticed that the American ambassador has been elected an honorary Bencher of the Middle Temple. The practice of appointing honorary Benchers at the various Inns of Court is modern. It appears that at the Middle Temple the first honorary Bencher to be elected was Lord Robertson, formerly Lord President of the Court of Session, and later, a Lord of Appeal in Ordinary. Elected in November, 1899, he was given precedence next after the Treasurer for the time being and members of the Royal Family. Again in 1905 the late Mr. Joseph Choate, then representing the United States in this country, was made a Bencher, an honor he prized highly and which he recognized in a very practical way by presenting to the library a large collection of American law reports which have been found of immense use.

LETTERS OF INTEREST TO THE PROFESSION

Senator Long's Part in Settling Important Point in Connection With Preliminary Organization of Legislative Body

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

In the early days of his public career the late Chester I. Long rendered distinguished service in the field of Constitutional Law when he was a member of the Senate in the Legislature of Kansas. In the election of 1892 the Populist party, aided by poor crops and very hard times, elected 54 out of 123 members of the House of Representatives. The Republicans elected 65, the Democrats three and there was one independent Republican. On January 10, 1893, the Republicans, having a majority of the statutory number in the House with certificates of election from the duly constituted authorities, organized by electing George L. Douglass of Wichita as Speaker. On January 14 Governor Lewelling communicated with and thereby "recognized" a Populist organization with J. M. Dunsmore as speaker, which had been formed in the same hall by the 54 Populists and the counting of ten others who had no certificates. The Populists had filed contests of the seats of a number of Republican members and claimed that those members were thereby disqualified from participating in the first organization of the House and until the question of their election had been decided. Of course, as the Supreme Court held, both parties might, by thus challenging the seats of all opponents, leave nobody to organize a House.

For two months the strife was very fierce and it was charged by both sides that their opponents were bearing concealed weapons. The Populist Governor called upon the militia to disband the Republican House, but the Adjutant General refused to respond. He was court-martialed and removed.

It took some time to work up a theory of a justiciable case as distinguished from a political one. This was brought about on February 13 by the arrest of a man who had been subpoenaed by the Republican House to testify before one of its committees in an election matter and who had refused to answer. A habeas corpus proceeding brought to secure his release raised the question of the power of the Republican House to arrest for contempt, that is, the question of the legality of its existence (In re Gunn, 50 Kansas, 155).

On February 25, 1893, the Supreme Court rendered a decision in favor of the validity of the Republican House, and on February 28 the Dunsmore House, which had been driven out in the meanwhile and had taken up quarters in another part of the Capitol, appeared in the hall of the House of Representatives and took their seats.

Senator Long was the leading spirit in working out the theory of a justiciable case, and his brief, which is cited at page 165 of the report, laid down the proposition upon which the decision turned, namely, that a certificate of election issued by a legally constituted canvassing board authorized the holder to occupy his seat in the preliminary organization of the House, and until the organized House might oust him.

This was a celebrated case in that day and has been often cited since. In the National Republican Convention of 1912 the followers of Theodore Roosevelt undertook, by challenging the credentials of a number of the regular Republican delegates, to disqualify them from acting in the preliminary organization of the Convention. Elihu Root, who was chairman through that memorable battle, ruled in accordance with the principle asserted and maintained by Chester I. Long and his associates nineteen years before.

THOMAS JAMES NORTON

Chicago, July 5, 1934

Mr. Benjamin's Genius for Stating His Case

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

My friend James M. Beck's letter in your July issue, headed by you "More About Judah P. Benjamin," I found tremendously interesting. In fact I have always found everything that Mr. Beck says or writes interesting.

In his letter to you Mr. Beck recites an interview he had with Lord Halsbury, a former Lord Chancellor of England, in which Lord Halsbury told of Mr. Benjamin's marvelous ability to present the facts of a case in a masterly, captivating and convincing manner.

Many years ago, while I lived in Kansas City, I was invited by a Confederate Veterans' Club to deliver an address on Judah P. Benjamin. I got all the information I could about him and his career, particularly in this country. One of the things I learned and told my audience was this:

When Mr. Benjamin first appeared before the United States Supreme Court (of which, by the way, he was in later years invited by the President of the United States to become a member) he stood up to present his case. Justice Campbell, of New Orleans, bowed to him. Mr. Benjamin made quite a lengthy presentation of the facts. After he finished his statement as to the facts, the court took its usual recess. As the Judges walked out, Chief Justice Taney said to Justice Campbell, "Who is your friend?" Justice Campbell replied, "Judah P. Benjamin of New Orleans." Chief Justice Taney then said, "Well, your little friend has already stated his adversary out of court."

It has often been said that a case well stated is half won. I say it's a good deal more than half won.

When Francis M. Black, an exceptionally strong, able judge, was Chief Justice of Missouri, he said to me, "I make up my mind on the facts who is right and then as a rule I conclude that I will decide in favor of that party, and I never have any trouble finding plenty of law to sustain the conclusion I reached."

After Judge Charles Evans Hughes retired from the bench of the United States Supreme Court, and while he was still practicing law here, before he became Chief Justice, he delivered a superb lecture on the practice in the Federal Supreme Court, in a course of lectures that I was conducting for The College of the City of New York. In the course of his lecture he said that in his opinion probably sixty or seventy-five per cent. of the cases argued before that Court were decided on the oral presentations.

HENRY WOLLMAN

New York City, July 11

Don't Forget "Ten Thousand a Year"

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

Apropos of the comment by Mr. Cake on the article by Mr. Armstrong relating to law in literature it seems that one name has been badly overlooked. I refer to "Ten Thousand a Year" by Samuel Warren. This book is almost a treatise on ejectment and who can ever forget Tittlebat Titmouse, "England is my nation, London is my dwelling place and Christ is my salvation"; or Oily Gammon of Quirk, Gammon and Snap, solicitors, Quirk being one of the successful defenders of the criminal classes.

Eliminate the legal forms and still you have a satire on law and politics of the earliest Victorian period.

EDWARD D. TITTMANN.

Hillsboro, N. M., March 3.

NEWS OF STATE AND LOCAL BAR ASSOCIATIONS

Indiana

WILMER T. FOX
President, Indiana Bar Association

Indiana State Bar Association Devotes Special Attention to Practical Professional Problems—Will Continue Efforts for Creation of Judicial Council and for Vesting Complete Rule-Making Power in Supreme Court

Reporting an increase in membership for the first time in several years and with an unusually large attendance, the Indiana State Bar Association held its annual summer meeting at Lake Wawasee on July 12th and 13th.

Wilmer T. Fox of Jeffersonville, Indiana, was elected President and Fred C. Gause of Indianapolis was elected Vice-President. New members of the Board of Managers are Ben C. Rees, of La Porte; Albert H. Cole, of Peru; A. J. Stevenson, of Danville; John S. Hastings, of Washington; Benjamin E. Buente, of Evansville; and Charles A. Lowe, of Lawrenceburg. The new President of the Association has been active in the affairs of the Association for a number of years and is one of the strongest advocates for Integrated Bar legislation. He was advanced from the Vice-Presidency and succeeds Eli F. Seebirt, of South Bend. The new Vice-President is a former member of the Indiana Supreme Court, and has also been active in Association affairs.

Particular attention was given in the program to practical questions of the profession and in carrying out this idea one session of the meeting was devoted to a discussion of problems in the trial courts. This session was presided over by Judge Fred E. Hines of the Hamilton Circuit Court and addresses were given by Judge Milton S. Hastings of the 49th Judicial Circuit, Judge Albert B. Chipman of the Marshall Circuit Court and Judge Maurice E. Crites of the Lake Superior Court.

The evening session of July 12th was devoted to a discussion of the proposed New Code on Criminal Procedure with talks being given by Professor Rollin M. Perkins, of the University of Iowa; Professor James Robinson, of Indiana University; Philip Lutz, Jr., Attorney General, and James M. Ogden, former Attorney General.

Guest speakers at the meeting included Henry S. Caulfield, former Governor of Missouri; Judge William W. Potter of the Supreme Court of Michigan; Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio, and Professor Perkins.

The Association will continue its efforts to obtain legislation vesting in the Supreme Court the power to prescribe all rules and regulations related to practice and procedure and also for the creation of a Judicial Council. The Legislative Committee in its report suggested that it might be possible to combine this proposed legislation in one bill and this matter will be given consideration by the Board of Managers prior to the meeting of the General Assembly.

THOMAS C. BATCHELOR,
Secretary.

Kentucky

Thirty-third Annual Meeting of the Kentucky State Bar Association Best Attended in Recent Years—New State Bar Organization to Be Completed in Fall—President's Address Takes Issue With Minnesota Moratorium and New York Milk Case Decisions

The 33rd Annual Meeting of the Kentucky State Bar Association was held Thursday and Friday, July 5th and 6th at Lexington, Kentucky. The change in time of holding the Annual Meetings from April to the month of July has resulted in greatly increased attendance. The 1934 meeting was probably the best attended in recent years.

In view of the fact that a Bar Government Bill (Act 101-1, 2 Kentucky Statutes) was passed by the 1934 Regular Session of the Kentucky General Assembly, it is probable that the July meeting will be the last to be held by the old voluntary association. Under the Act just passed, the Court of Appeals of Kentucky is authorized to adopt and promulgate such rules and regulations as the Court may deem proper for the organizing and governing of a Bar Association as well as certain other matters affecting the practice of law. Pursuant to this Act the Court of Appeals has just promulgated eighteen rules for the organization and government of the Bar as well as for the practice and procedure for disciplining, suspending, and disbarring attorneys at law. In accordance with these rules the organization of the new State Bar will be completed in the fall.

The address of welcome was delivered by Mr. R. W. Keenon, President of the Lexington Bar Association.

Mr. Selden Y. Trimble in the first part of his President's address gave a summary of the legislation passed by the 1934 General Assembly. In the second part Mr. Trimble discussed various aspects of the New Deal and laid some stress on the Minnesota Moratorium and the New York Milk cases decided by the Supreme Court. He took issue with these decisions.

In response to this address, Senator Alben W. Barkley, the senior Senator

ROBERT T. CALDWELL
President, Kentucky Bar Association

of Kentucky, at a luncheon meeting on July 5th, delivered an addresss vigorously defending the New Deal and its policies.

Hon. Neville Miller, Mayor of the City of Louisville, gave an interesting address on "Municipal Aspects of the Liquor Question" and stressed the fact that if the best results are to be obtained under the 21st Amendment, taxation of the industry should not be solely for the purpose of revenue but rather should place emphasis on social aspects and should consider the iniquity of bootlegger competition.

Prof. Frank H. Randall of the Law Department of the University of Kentucky delivered an address on the subject "Suggestions for Kentucky in the New Civil Practice Act of Illinois."

The principal speaker and guest of honor at the Annual Dinner, which was held at 7:30 P. M. July 5th at the Lafayette Hotel, was Hon. A. O. Stanley of Washington, D. C., former Governor of Kentucky and former United States Senator. Under the subject "Look Unto the Rock, Whence Ye Are Hewn," Senator Stanley placed great stress on an adherence to the Constitution and on the principles of Thomas Jefferson.

Mr. John C. Doolan of the Louisville Bar delivered a very interesting address entitled "Some Great Lawyers of Kentucky."

Judge Alvan H. Clark, Hopkinsville, Kentucky, delivered a most entertaining address on the subject "Nothing Ever Happens." The theme song of the address was the excessive law making propensity of the American people.

Judge William H. Rees, Chief Justice of the Kentucky Court of Appeals, addressed himself to the rules just promulgated by the Court of Appeals pursuant to the Bar Act and to certain other phases of the Statute, under the subject "Bar Integration by Legislative Act."

The session was of two days' duration. Numerous Committee Reports were considered.

The officers and Executive Committee elected at the meeting are as follows: President, Robert T. Caldwell, Ashland; Secretary, Wilson W. Wyatt, Louisville; Treasurer, William B. Gess, Lexington. Executive Committee: Max B. Harlin, Bowling Green; Selden Y. Trimble, Hopkinsville; Beverly R. Jouett, Winchester; John K. Todd, Shelbyville; Coleman Taylor, Russellville; James Park, Lexington; S. D. Rouse, Covington; and the President, Secretary and Treasurer ex officio.

Vice-Presidents: H. W. Linton, Hopkinsville; Arthur D. Kirk, Owensboro; J. R. White, Glasgow; J. Blakey Helm, Louisville; Nelson Rodes, Danville; Hanson Peterson, Cynthiana; J. J. Tye, Barbourville.

WILSON W. WYATT,
Secretary

North Carolina

CHARLES W. TILLETT
President, North Carolina Bar Association

First Meeting of New Incorporated Bar Followed by Usual Program of Voluntary Association

The first annual meeting of the North Carolina State Bar, generally known as the Incorporated Bar, was held at Duke University, Durham, N. C., June 28, 1934. The address of welcome was made by Dean Justin Miller and was responded to by President I. M. Bailey, of Raleigh. The report of the Secretary-Treasurer H. M. London showed that 2,235 lawyers had registered and paid the required dues of $3 under the new act.

Following reports of committees and discussions, an address was delivered by Assistant Attorney General Joseph B. Keenan on "The Lawyer's General Responsibility to Society and Government." At the afternoon session Judge William Logan Martin of Birmingham, Ala., addressed the meeting on "The Obligations and Opportunities of the Incorporated Bar."

The report of Joseph B. Cheshire, Chairman of the Grievance Committee, showed that several cases for disbarment had been initiated and a healthy sentiment developed for the prosecution of unworthy members of the profession. President I. M. Bailey and Vice-President Julius C. Smith were unanimously reelected in recognition of the splendid work done by them in organizing and launching the new Incorporated Bar.

After adjournment of The North Carolina State Bar, on Thursday night, June 28, the Thirty-sixth Annual Meeting of the North Carolina Bar Association (the old voluntary association) convened at Duke University. Following addresses of welcome by F. L. Fuller, Jr., President Durham County Bar Association, and Dr. W. P. Few, President Duke University, a response was made by Kingsland VanWinkle, of the Asheville Bar. The President's address was delivered by J. Elmer Long, of Durham, on "The Relationship Between the Younger and Older Men of the Bar." Judge Robt. W. Winston, of Chapel Hill, concluded the evening's program with an address entitled "A Garland for Ashes: An Aspiration for the South."

On Friday morning addresses were delivered by Judge F. F. Faville, of Des Moines, Iowa, on "Religious Freedom and the Common Law," and by Thomas J. Pearsall, of the Rocky Mount Bar, on "The Young Lawyer and Self-Preservation." The program came to a close Friday evening with addresses by Hon. Earle W. Evans on "The National Bar Program" and Dean Justin Miller on "Probation—A New Device in Criminal Law Enforcement."

The following officers were elected for the ensuing year: President—Chas. W. Tillett, Jr., of Charlotte; Vice-Presidents—Henry C. Bourne, Tarboro; Prof. H. C. Horack, Duke University; R. Gregg Cherry, Gastonia; Secretary-Treasurer, Henry M. London, Raleigh; two members of the Executive Committee to serve for three years—Francis E. Winslow, Rocky Mount and Nat S. Crews, Winston-Salem.

HENRY M. LONDON, Secretary

Pennsylvania

Pennsylvania Bar Meeting Has Record-Breaking Attendance—President Beitler's Address Calls on Bar to Battle All Influences Antagonistic to Liberty and Equal Opportunity —Change in Bar Admission Rules Recommended

President Harold B. Beitler of Philadelphia sounded the keynote which ran throughout the entire 40th Annual Meeting of the Pensylvania Bar Association held at Galen Hall, Wernersville, Pa., June 27th to 29th.

Evidence that the legal profession of

Pennsylvania is thoroughly aroused for the future of the American Democracy and the perpetuation of a government of law is found, not only in the fact that the attendance was the largest in the history of the Association, but in the overwhelming sentiment advocating the ideals of an impartial administration of justice, and in the insistence that the jurist and the lawyers recognize the tendency to disregard the morals of industrial, business and commercial life. The demand was that the profession must give battle to all those philosophies which exploit the liberties of a Free People and destroy Equal Opportunity.

Giving voice to this fundamental school of thought, the President's annual address was devoted to a keen and searching analysis of Federal legislation of the past year. Under a subject entitled "Alphabetical Amazement" the thirty-five agencies set up under the "New Deal" legislation were discussed. The message was generally accepted as constructive. It admitted that much good or tendency to improvement could be found in the sea of regulation. It did, however, question seriously the constitutionality of the growth of government by a bureaucracy.

The Committee on Federal Law, under the chairmanship of Ira Jewell Williams, of Philadelphia, in its annual report launched a most vigorous attack on the activities of the Federal Government. The report of the Committee adopts the following language: "The never ending audacity of elected persons has extended to unpathed waters, undreamed shores."

After a discussion of the legislation and the opinions of the Supreme Court of the United States handed down during the past year, the Committee spoke plainly as to the duty of the Bar to oppose every subversive action and every step of temporary expediency or supposed benefit which ultimately must prove antagonistic to the constitutional guaranties. The report closes in these significant words:

"Higher than any obligation the lawyer owes to some supposed immediate public welfare, is his duty to sustain the charter of our liberties."

The report of the Committee was adopted by the Association.

Of great interest to the profession at large was the report of the Committee on Advisability of Seeking Changes in Rules Relating to Admission to the Bar, under the chairmanship of former Chief Justice Robert von Moschzisker. This report was presented on the floor of the Association meeting by Robert T. McCracken. After a thorough discussion the necessary action was taken by the Association whereby recommendations will be made to the Supreme Court seeking changes in the rules of admission to the Bar so that the local examining board may no longer be required to furnish to the State Board a detailed set of reasons for their disapproval of any candidate, but may simply make an adverse report on any candidate setting forth that the applicant does not possess the attributes of character required for registration as a law student or for admission to the Bar. The right of the applicant to be heard is secured by an appeal to the State Board of Law Examiners and a final appeal to the Supreme Court of Pennsylvania.

Like a refreshing shower of rain unto a parched and dreary land was the report of the Committee on Taxation under the chairmanship of Franklin Spencer Edmonds, with its included indication of a sympathetic understanding of an appellate Court of Pennsylvania in tax matters. The report mentions specifically the case of Webster's Estate, 314 Pa. 233, wherein the Supreme Court of Pennsylvania, speaking through Mr. Justice Schaffer, said:

"The State ought not be too tech-

FOREST G. MOORHEAD
President, Pennsylvania Bar Association

nical in tax matters, particularly under today's conditions, when high taxes dismay the living and follow the dead into their graves."

The Committee appointed to consider necessity for calling a Constitutional Convention for the State of Pennsylvania, under the chairmanship of Joseph W. Henderson, made a finding to the effect that a need actually exists for revision of the present Constitution. After some discussion, however, it was determined by the Association that the Committee should make further study of this rather serious question and action was to be deferred for the present.

The Committee on the Unauthorized Practice of the Law, under the chairmanship of Howard A. Lehman, was expressly authorized on behalf of the Association to institute criminal prosecutions against all persons or companies violating the terms and provisions of the Act of April 24, 1933, P. L. 66, prohibiting unauthorized persons or corporations from engaging in the practice of the law as well as holding themselves out as attorneys.

The meeting was attended by 612 members of the Association who actually registered at the Association's executive office in the lobby of Galen Hall Hotel. This is the largest registration at any annual meeting of the Pennsylvania Bar Association. The previous high record for attendance was set in 1929 when 365 members registered at Bedford Springs Hotel. The membership of the Association was increased by 309 new members. The by-laws of the Association were amended so as to provide for a new classification of membership. Any active member who has been for five years, and is at the time of application, in good standing may become a life member of the Association upon paying the sum of One Hundred Dollars and shall be thereafter exempt from all liability for dues.

Attorney General of the Commonwealth of Pennsylvania, William A. Schnader, delivered the annual address by reviewing the events of the last eleven years in the field of public law in Pennsylvania. His discourse was packed with facts which sent the membership home determined that only performance can discharge the lawyer's duties in this all-important day, and especially that of the law-making branch of our Government. In Pennsylvania alone, he said, there are more than eleven thousand statutes dating back to colonial days which affect the lives of every natural and artificial person.

In referring to these great numbers of statutes he declared that Montaigne was not far wrong when in 1588 he said, "I am further of opinion that it would be better for us to have no laws at all than have them in so prodigious numbers as we have."

Mr. Schnader criticized the organized Bar of Pennsylvania for its negligible record in initiating legislation of primary importance, and concluded with the hope that the day may come soon when the passage of any statute of general application will be looked upon as an event of outstanding importance.

The annual banquet was held in honor of President Judge Frank M. Trexler, of the Superior Court of Pennsylvania.

At the annual organization meeting of the Association Forest G. Moorhead, of Beaver, Pennsylvania, was elected President for the coming year. John McI. Smith, Bergner, Building Harrisburg, Pennsylvania, was re-elected Secretary. The mid-winter meeting of the Executive Committee is set for December 28, 1934, and the dates chosen for the 41st Annual Meeting were June 26, 27, and 28, 1935.

The new President was born in Pennsylvania and received his collegiate training at Thiel College, Greenville, Pennsylvania, and at Allegheny College, Meadville, Pennsylvania, of which latter he is a Trustee. He received his legal education at Northwestern University Law School with the class of 1901, receiving the degree of LL. B. at that time. He took the Illinois State Bar Association examination and was passed and admitted to the Bar of the State of Illinois in the spring of 1901. He is also a member of the United States District Court for the Northern District of Illinois. Shortly after, he located in Beaver, Pennsylvania, where he has been in active practice ever since. He has always been active in the local and Pennsylvania State Bar Associations and also in the American Bar Association, of which he has been a member since 1911, attending his first meeting of that Association when it was held in Milwaukee in 1912, and will be in attendance at the meeting to be held in Milwaukee this year.

JOHN MCI. SMITH,
Secretary.

Tennessee

Tennessee Bar Association Approves Passage of Self Governing Bar Bill and Appoints Committee to Work Out Details—Approves Various Measures for Law Reform

The Fifty-Third Annual Meeting of the Bar Association of Tennessee was held at Memphis Country Club on June 1 and 2, 1934, with the Memphis and Shelby County Bar Association as hosts. The keynote of the session was the approval by the Association of the recommendation that some type of self-governing bar bill be passed in Tennessee. A Committee was appointed to work out details including the form of the bill to be presented to the next Legislature. Hon. W. W. Venable of Clarksdale, Mississippi, addressed the Association on the subject of the experience of Mississippi with the Self-governing bar.

The Association also went on record as approving certain law reforms recommended by that Committee of the Association, among the more important being the following:

(1) Repeal of the State prohibition law and the passage of a law providing for regulated sales of intoxicating liquor under the control of a non-partisan, non-political board.

(2) The extension of civil service in State government.

(3) More effective control of payment of poll taxes; making it a felony for a corporation to pay or furnish money for paying poll taxes.

(4) Elimination of the fee system in connection with magistrates' courts and the establishment of inferior courts presided over by members of the legal profession, instead of the present justice of the peace system.

(5) The passage of a law suspending a chief of police or sheriff from office where the prisoner in his custody is lynched.

LOUIS LEFTWICH
President, Tennessee Bar Association

(6) Submission to the jury of proper issues of fact in law cases.

(7) Public hearings on notice before a non-political board before the exercise of pardoning power.

(8) The furnishing of a psychiatrist in criminal cases, for corrective institutions, and in parole and pardon cases.

Hon. Sennett Conner, Governor of the State of Mississippi, gave a learned and interesting address on "Evolution in Government."

The following officers were elected for the ensuing year: Louis Leftwich, Nashville, President; J. V. Williams, Chattanooga, Vice-President, East Tennessee; Ed. T. Seay, Nashville, Vice-President, Middle Tennessee; J. E. Holmes, Memphis, Vice-President, West Tennessee; A. L. Heiskell, Memphis, Secretary; J. E. Atkins, Jr., Knoxville, Treasurer.

The next annual session of the Association will probably be held in Nashville.

LONGSTREET HEISKELL,
Secretary.

Texas

Fifty-Third Annual Meeting of Texas Bar Association Has Largest Attendance in Its History—Interesting Addresses Delivered

The Fifty-Third Annual Meeting of the Texas Bar Association was held at Fort Worth, Texas, July 5, 6 and 7, 1934. This was unquestionably the largest meeting of the Association ever held. There were registered 832 members of the Association, which represented more than two-thirds of its entire membership; and, in addition, more than 350 ladies registered.

Two of the special features of the meeting were: a luncheon given at the Blackstone Hotel to the members of the Judiciary of Texas, on the first day, July 5; and a luncheon in honor of the pioneer lawyers of Texas, that is, those who have practiced law for more than fifty years, given at the Blackstone Hotel on July 6. At both luncheons more than 300 members attended. A majority of the members of the District and Appellate Courts of Texas attended the judges' luncheon, and more than 50 lawyers who have practiced for more than fifty years attended the luncheon in honor of the pioneer lawyers.

Hon. Donald R. Richberg, General Counsel for the National Recovery Administration, delivered one of the principal addresses, which was of real interest to a large and enthusiastic audience.

Hon. Earle W. Evans, President of the American Bar Association, delivered an address on the National Bar program. Mr. Evans pointed out the disrepute into which the Bar has fallen in recent years, the methods which have been adopted by the national and state associations to combat it, and the encouraging progress made. Mr. Evans pointed out that this meeting, attended by more than two-thirds of the entire membership of this Association, was characteristic of all meetings which he has attended this year, which indicates an increased interest of the members of the Bar throughout the United States in the problems and responsibilities of the lawyers.

Judge J. C. Hutcheson, Jr., Associate Justice of the United States Circuit Court of Appeals for the Fifth District, Chairman of the Committee on Cooperation with the American Law Institute, delivered a report in which he emphasized the importance of the work of the Institute.

Mr. Harry P. Lawther, of Dallas, Chairman of the Special Committee on the Self-Governing Bar, delivered the report of his Committee, which was unanimously adopted, and the Committee was continued with instructions to again urge with renewed vigor, before the next session of the Legislature, the enactment of this bill.

Mr. Fred L. Blundell, President of the State Association of District and County Attorneys, delivered an address on law enforcement. This address provoked extended discussion, particularly by district and county attorneys present,

H. C. PIPKIN
President, Texas Bar Association

and recommendations for important legislation were adopted.

Mr. Robert L. Guthrie, of Dallas, delivered an address on "Judicial Selection."

The President, Hon. John C. Townes, of Houston, in his annual address, reviewed the accomplishments of the Association during the past year, and pointed out the necessity for lawyers to reassert their old time leadership, which of recent years has been weakened.

The attendance was general from cities and counties throughout the state.

One of the notable entertainment features was a barbecue at River Crest Country Club, attended by more than a thousand persons, at which most of the officers and directors of the Association were put on the gridiron, and at which a delightful entertainment was afforded.

The speakers at the banquet were Hon. J. C. Hutcheson, Jr., Associate Justice of the Circuit Court of Appeals, New Orleans; Judge William W. Westerfield, of New Orleans; Hon. D. A. Simmons, of Houston, Texas; Hon. Fritz C. Lanham, of Forth Worth, Texas; Hon. John C. Townes, of Houston, Texas, the retiring President; and Hon. H. C. Pipkin, of Amarillo, the newly elected President. Hon. Henry P. Burney, of San Antonio, Texas, presided as Toastmaster.

Hon. H. C. Pipkin, who has been a member of the Board of Directors for six years, and who has twice served as a chairman, was unanimously elected President of the Association. Hon. W. T. Armstrong, of Galveston, a member of the Board of Directors, was elected Vice President. George C.

Gaines, Jr., was reelected Secretary and Treasurer.

The following Directors were elected: Hon. James L. Shepherd, Houston; Hon. Guy Rogers, Wichita Falls; Judge Ben H. Powell, Austin; Hon. Henry P. Burney, San Antonio; Hon. D. A. Frank, Dallas; Judge Will C. Hurst, Longview; Hon. E. L. Klett, Lubbock; Hon. Robert L. Holliday, El Paso; Hon. Charles T. Butler, Beaumont; Hon. James P. Alexander, Waco; Hon. D. M. Oldham, Jr., Abilene.

Wisconsin

Wisconsin State Bar Association Holds Annual Meeting—President Rix Emphasizes Responsibility of Bar and Makes Strong Plea for Bar Integration—Other Details of Meeting

The 56th annual meeting of the Wisconsin State Bar Association opened at Lawsonia Country Club Hotel, Green Lake, Wisconsin, on the afternoon of June 20. Approximately 200 people were present at the first meeting, which is better than the usual attendance. The meeting was called to order by President Rix, and Vice President T. L. Doyle, Fond du Lac, delivered the address of welcome. In the absence of Chief Justice Marvin B. Rosenberry of the Wisconsin Supreme Court, necessitated by illness in his family, Justice Chester A. Fowler delivered the response.

This was followed by the address of President Carl B. Rix, Milwaukee, who reviewed the changing conditions which affect the legal profession. He emphasized the responsibility of the Bar in the new era, and strongly advocated integration of the Bar. It was one of the most outstanding and forward looking addresses that the Association has listened to in recent years.

T. L. DOYLE
President, Wisconsin Bar Association

Following that, the Association took up the National Bar Program, with an introductory statement by Edwin S. Mack, chairman of the Planning Committee, which was read by Dean Francis X. Swietlik of the Marquette University Law School. This was followed by reports by Dean Swietlik, as chairman of the Committee on Criminal Law, and by Prof. Alfred L. Gausewitz of the University of Wisconsin Law School on the same subject. R. B. Graves, Wisconsin Rapids, chairman of the Committee on Judicial Selection, read a report recommending changes in our method of judicial selection and the establishment of a judicial council to pass upon the qualifications of candidates for the bench.

Interesting reports were given by Malcolm K. White, chairman of the committee on Qualifications for the Bar and Admissions to the Bar; also by Paul N. Grubb, Janesville, a member of the committee and one of the members of the Board of Bar Commissioners.

Edmund B. Shea, chairman of the Committee on Unauthorized Practice of Law, reviewed the extensive work of the committee during the past few months, and the satisfactory progress made thereby. The committee concluded by making the following recommendations: In order that the work which the bar has undertaken in this field may be carried forward, that every circuit and every local bar association be urged to set up a standing committee with responsiblity to investigate local abuses in the field of unauthorized practice, in order to promote organized discussion and consideration thereof, in conformity with the American Bar Association's program, and to follow up and deal with complaints, utilizing the services of the State Association where such cooperation is desired.

In connection with the report of the Committee on Unauthorized Practice, Walter Bender read a paper in which he emphasized the importance of publicity, showing that the public is deeply interested in this movement from an economic standpoint, and that it is not promoted for any selfish interest of the lawyer.

The principal guest speaker of the convention was James Grafton Rogers, Dean of the Law School of the University of Colorado, who gave an interesting review of the development of the legal profession in this country, and mentioned some of its unique characteristics.

Following Dean Rogers' address, a round table discussion was held, comprising the subject of (a) compulsory automobile insurance; (b) automobile compensation, which comprises a plan similar to that under the Workmen's Compensation Act. The discussion was conducted by Gerald P. Hayes, Milwaukee, chairman. Prof. Ray A. Brown, of the University of Wisconsin Law School, gave an account of the investigation which had been made under his direction into statistics regarding automobile accidents in Wisconsin. This investigation covered the principal causes of dissatisfaction with methods of settling and litigating automobile accident cases. It dealt with several proposals made for handling the situation. He called attention to the fact that the study was not in the nature of propaganda for any one of the proposals, but was for the purpose merely of ascertaining the situation in 18 Wisconsin counties, representative of the state, and that in obtaining these facts resort was had both to court records and interviews with attorneys and others. The final report of this committee was given on Friday morning. The committee unanimously recommended that the enactment and proper enforcement of the Model Uniform Motor Vehicle Safety Responsibility Act, recently recommended by the American Automobile Association, be secured in Wisconsin, and stated its belief that such enactment would result in the greatest amount of good to the greatest number of people, and would more

nearly solve many of the problems arising out of automobile accidents than any plan yet proposed.

Thursday morning was devoted to a valuable discussion on the subject of the unified bar. This discussion was taken part in by Claire B. Bird, Wausau, chairman of the General Committee on this subject; Judge F. W. Bucklin, West Bend; J. Gilbert Hardgrove, Milwaukee, and others. Dean Lloyd K. Garrison presented a proposed draft of a law to be presented to the next session of the Wisconsin legislature.

The experience and views of the state of Michigan on this subject were presented by Carl V. Essery, Detroit, Michigan, president of the Michigan State Bar Association. The Association went on record, with only two or three dissenting votes, to favor the general principle of a uniform or integrated bar.

Thursday afternoon was devoted to golf and other recreation, and this was followed by a banquet in the evening at the Lawsonia Hotel, after which prizes offered by the Association for winners in the various events were presented. The subject of the afternoon banquet program was "The Lawyer Looks to the Future." The following were the speakers on this occasion: R. Allan Stephens, Secretary of the Illinois State Bar Association; Charles Bunn, St. Paul, recently called to a professorship in the University of Wisconsin Law School; James Taugher, Milwaukee, and James Grafton Rogers, Dean of the Law School of the University of Colorado. Hon. Burr W. Jones, Madison, presided as toastmaster. The meeting was conceded to be one of the most interesting and entertaining after-dinner meetings that the Association has had in many years

Friday morning was devoted to committee reports and routine matters for the most part. The following officers and members of the Board of Governors were elected for the ensuing year: T. L. Doyle, Fond du Lac, President; Otto A. Oestrich, Janesville, Vice-President; Gilson G. Glasier, Madison, Secretary and Treasurer; Arthur A. McLeod, Assistant Secretary. Board of Governors: Lawrence H. Smith, Racine; Frank T. Boesel, Bernard V. Brady, Gerald P. Hayes, Chris. Steinmetz, Jr., Walter A. John, George A. Burns, Edwin J. Gross, J. Gilbert Hardgrove and Reginald I. Kenney, of Milwaukee; Frank B. Keefe, Oshkosh; Oscar L. Wolters, Sheboygan; Harry E. Carthew, Lancaster; Elmer E. Bartow, Arcadia; R. B. Graves, Wisconsin Rapids; Ferris M. White, River Falls; H. M. Langer, Baraboo; Frank W. Lucas, Madison; Stanley A. Staidl, Appleton; Tom L. Yates, Amery; William H. Dougherty, Janesville; E. A. Kletzien, Menominee Falls; Joseph Martin, Green Bay; Herman Leicht, Medford; Francis J. Golden, Merrill; Eli S. Jedney, Black River Falls; Harlan B. Rogers, Portage; Francis J. Wilcox, Eau Claire; Pierre Martineau, Marinette.

GILSON G. GLASIER,
Secretary.

The Movement for Bar Integration

THERE has been a tendency on the part of some bar integration committees to phrase their bills so that they provide that a state bar, or a bar association, shall be "created" or "established." Judge Clarence N. Goodwin, long chairman of the Conference of Delegates' committee on State Bar Integration, has pointed out that there is now in every state a state bar. There

is no need for creating or establishing a bar. "The Bar of every state is an entity but unorganized, and without powers to function as a body." It is the lack of inclusive organization which must be met by legislation or rules of court. The bar as it exists, naturally includes all persons entitled to practice. The function of the legislature is to provide for the bar a workable organization.

Judge Goodwin says also: "There might be a doubt about the power of the legislature to delegate authority to create a public agency or to establish a public corporation. There is, however, no reasonable doubt about the authority of the legislature to authorize the Supreme Court to provide for the organization and self-government of a branch of the judiciary. It also seems important and desirable that the body of lawyers to be organized should be referred to as the Bar, which is its proper title, and not an association—a term which confuses it with the voluntary, unofficial organizations in various states."

In the July number of this JOURNAL mention was made of the conference of lawyers and judges held May 19 at Boulder, under the auspices of the Colorado University School of Law, on which occasion a member of the Supreme Court reported that the Court had drafted rules providing for bar integration. Early in June the Court appointed a committee of lawyers to assist it in the organization of the Bar under rules. The work has progressed so far and under such favorable circumstances as to justify the expectation that Colorado will be the first state in which integration is achieved without legislation. But presumably not the last.

At the meeting of the Wisconsin State Bar Association held June 20 there was a spirited discussion of the phraseology of the bar bill drafted by its strong committee. The Milwaukee Lawyers Club submitted a number of suggestions for amendments. This resulted in referring the bill back to the committee, which will continue its work and submit a report to the board of governors in advance of a special meeting to be held in the fall. The revised draft will be submitted to all local associations with a request that they send instructed delegates to the special meeting. The expectation is that agreement will be reached on the form of the bill and that it will be enacted at the next legislative session.

Members of bar integration committees who have not received copies of the report of the committee to the Michigan State Bar Association, and the report to the Wisconsin State Bar Association above referred to, would do well to request copies either from the American Bar Association office or from the secretary of the Conference of Delegates, Herbert Harley, Law School, Ann Arbor, Mich. These reports represent the most thorough efforts made in a number of years to present all information concerning the forms of organization and the experience had in a number of states. They also quote the opinions of many lawyers whose names were chosen at random from legal directories.